federal register

TUESDAY, OCTOBER 29, 1974

WASHINGTON, D.C.

Volume 39 ■ Number 209

PART II

ENVIRONMENTAL PROTECTION AGENCY

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NOISE EMISSION STANDARDS FOR CONSTRUCTION EQUIPMENT

Proposed Portable Air Compressor Standards

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 204]

[FRL 282-2]

NOISE EMISSION STANDARDS FOR CONSTRUCTION EQUIPMENT

New Portable Air Compressors

The Environmental Protection Agency proposes to establish a new Part 204 of Title 40 of the Code of Federal Regulations, which will contain noise emission standards for construction equipment distributed in commerce. This notice proposes noise emission standards for portable air compressors. It was originally announced, in an advance notice of proposed rulemaking (39 FR 7594, February 27, 1974) that noise emission standards for portable air compressors would appear at 40 CFR Part 200. With the present proposal, EPA withdraws that statement, reserving, however, 40 CFR Part 200 for future use by EPA.

I. Introduction

A. *Statutory authority.* Through the Noise Control Act of 1972 (86 Stat. 1234), Congress established a National policy "to promote an environment for all Americans free from noise that jeopardizes their health and welfare." In pursuit of that policy, Congress stated, in section 2 of the Act, "that, while primary responsibility for control of noise rests with State and local governments, Federal action is essential to deal with major noise sources in commerce, control of which requires National uniformity of treatment." As part of this essential Federal action, section 5(b)(1) of the act requires the Administrator, after consultation with appropriate Federal agencies, to publish a report or series of reports "identifying products (or classes of products) which in his judgments are major sources of noise." Section 6 of the Act requires the Administrator to publish proposed regulations for each product which is identified or which is part of a product class identified as a major source of noise, where in his judgment noise standards are feasible and which fall into various specified categories. Construction equipment is one such specified category. Pursuant to section 5(b)(1), the Administrator published in the Federal Register (39 FR 22297, June 21, 1974), a report which identified portable air compressors with a rated output of 75 cfm or more as a major source of noise.

B. *Relationships to other parts of the Act.* Section 6 of the Act specifies that the manufacturer of each new product shall warrant to the ultimate user and each subsequent purchaser that the product is designed, built and equipped so as to conform at the time of sale with the regulation.

Labeling requirements in addition to warranty provisions specified in section 6, are authorized under section 8 and may be implemented in conjunction with new product regulations under section 6 authority. Such labeling of products under section 8 shall be based on the potential of noise emissions to adversely affect the public health or welfare or for any product sold wholly or in part on the basis of its effectiveness in reducing noise.

Section 10 of the Act establishes prohibited acts in relation to products for which section 6 regulations are applicable. Distribution in commerce of any new product manufactured after the effective date of regulations specified in section 6 is prohibited, unless it is in conformity with such regulations. Removal or rendering inoperative of any device or element of design incorporated into any product in compliance with section 6 regulations, other than for purposes of maintenance, repair, or replacement, prior to its sale or delivery to the ultimate purchaser or while it is in use or the product's use thereafter is prohibited by any person.

Section 11 of the Act specifies enforcement penalties for violation of any prohibited acts under section 10(a) (1), (3), (5) and (6). Such penalties for first violations include a fine of not more than $25,000 per day of violation or imprisonment for not more than one year or both for knowing or willful violations. The penalties double for subsequent violation.

Section 13 of the Act provides the authority for the Administrator to require a manufacturer to establish and maintain records, make such reports, and provide such information as necessary for him to determine compliance.

Section 16(d) grants the Administrator the authority to issue subpenas for the attendance and testimony of witnesses and the production of books, records and reports to assist him in collecting information to carry out the purposes of the Act.

II. Statutory Requirements for the Proposed Regulations

The Administrator has determined that noise emission standards are feasible for portable air compressors. In arriving at the noise limit considered requisite to protect public health and welfare, the Administrator has taken into account the degree of noise reduction achievable through application of the best available technology and the cost of compliance. Further, the Administrator has given appropriate consideration to standards under other laws designed to safeguard the health and welfare of persons.

To meet the requirements of the Act, to apply "the best available technology, taking into account the cost of compliance," the Agency constructed definitions of the terms "best available technology" and "cost of compliance." In so doing, the Agency carefully considered the strict language of the Act, its legislative history, and other relevant data. Based thereon, for the purposes of these regulations, the following definitions have been established by the Administrator.

"Best available technology" is defined as that noise abatement technology available which produces the greatest achievable, meaningful reduction in the noise produced by portable air compressors. "Available technology" is further defined to include:

1. Technology which has been demonstrated and is currently known to be feasible.

2. Technology for which there can be a production capacity to produce the product meeting the standards required prior to the effective date of the regulation.

3. Technology that is compatible with all safety regulations and takes into account operational considerations, including maintenance and other pollution control equipment.

"Cost of compliance" is the cost of identifying what action must be taken to meet the specified noise emission level, the cost of taking that action, and any additional cost of operation and maintenance caused by that action.

To determine what constitutes the best available technology and the cost of compliance, the Agency amassed information from numerous sources including: (1) Studies performed by Agency personnel; (2) studies performed under contract to the Agency; (3) submission by other Federal agencies; (4) submissions by the public; (5) submissions by industry; and (6) data in available literature.

III. Development of the Proposed Regulation

In order to develop regulations which fulfill these criteria, the Administrator undertook a study of portable air compressors. On February 27, 1974 an Advanced Notice of Proposed Rule Making on portable air compressor standards was published in the Federal Register soliciting public comment (39 FR 7954-95). The docket established as a result of this action is maintained at the EPA headquarters, 401 M Street SW., Washington, D.C. 20460. The information prepared for the EPA's 1971 "Report to the President and Congress on Noise" was reviewed. EPA staff and consultants gathered and analyzed technical information from other sources, and additional data was acquired in areas where there was little or no existing information. All of this information, which is summarized briefly below, is open for public inspection at the Office of Noise Abatement and Control of EPA, Room 1107, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia. A "Background Document for Proposed Portable Air Compressor Noise Emission Regulations" giving the details of the information base from which the proposed regulation was derived is available from the Public Information Center, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

IV. Background Information

A. *General.* The proposed regulation is the first in a series of regulations to be proposed in a new and unprecedented area for Federal regulation. In arriving at the proposed regulatory level, the Agency considered information accrued, from a number of sources, in regard to technology, cost, economic impact and

health and welfare. The accrued information is presented in the "Background Document for Proposed Portable Air Compressor Noise Emission Regulations."

The Agency is committed by statute and policy to in depth public participation in the decision making process for its environmental regulations. That policy encourages and solicits contributions to the public dockets and communications on technology costs, health and welfare and economic impact or benefits and any other attributes of the particular subject. These contributions are desired from as many diverse views as are possible. Such information, when submitted, is fully analysed and where this so indicates, necessary changes in proposals will be made, and explained in the final regulations. In accordance with this policy, all persons having views and recommendations are solicited to submit their comments, as provided for herein.

B. *Technology*. Portable air compressors are designed to power pneumatic tools and equipment at a construction site or other end use application. They are generally rated according to maximum flow rate at a pressure of 100 psi. The portable air compressor product line generally ranges from units of 75 cubic feet per minute (cfm) flow rate to those as high as 2000 cfm.

The majority of compressors delivering over 75 cfm are powered by gasoline engines, though some use diesel engines. Portable air compressor manufacturers have long recognized the need and desirability to provide quiet units to industry, as evidenced by their recent introduction of quiet models. To develop a technical data base, noise data of 194 units, in the 75 to 2000 cfm flow rate range, were acquired from portable air compressor manufacturers. The mean noise level for the existing quieted gas engine powered compressors evaluated is approximately 76 dBA at 7 meters. The mean of existing quieted diesel engine powered units is approximately 76 dBA at 7 meters for units delivering less than 501 cfm and approximately 79 dBA for quieted diesel-powered units delivering greater than 500 cfm. These levels compare with mean levels for the standard gasoline powered units of 83 dBA at 7 meters and approximately 86 dBA at 7 meters for diesel units delivering less than 501 cfm and approximately 93 dBA at 7 meters for the diesel units delivering greater than 500 cfm.

Noise sources associated with the portable air compressor are the engine exhaust, engine and compressor casings, engine and compressor air intake and cooling fans. For quietest versions of the portable air compressors, an exhaust muffler is used to suppress engine exhaust noise, an inlet silencer is provided to suppress engine and compressor air intake noise and the enclosure is used to provide suppression of engine and compressor case radiated noise as well as cooling fan noise. The quieting obtained through the application of these noise control techniques to portable air compressors can be defeated by operating compressors with the equipment access doors in an open position; data show that degradation of acoustic performance by 5–12 dBA can occur by this practice.

In arriving at the proposed description of portable air compressor noise, consideration was given to A-weighted sound pressure level, sound power level, and sound power as well as the test method for data acquisition. The A-weighted sound pressure level description was selected for several reasons, including its utility and ease of acquisition.

A-weighted sound pressure level can be measured directly using common, readily available equipment and as such is common to and widely known by industry, the scientific community, at State and local government levels and in the public domain to assess human response to noise. This is in contrast to the seldom used, in regard to regulatory standards setting and assessment of human response, sound power level and sound power values which cannot be measured and have to be calculated, typically from sound pressure level data.

The proposed regulation requires that the average, on an energy basis, A-weighted sound pressure level around a portable air compressor not exceed the proposed standard. In addition to the average dBA standard, consideration was given to limiting the maximum sound level, radiated in any direction around the portable air compressor, by imposition of a maximum dBA standard. The major reason for its possible inclusion was to control the noise directivity of portable air compressors; i.e., the maximum amount of noise that could be radiated in any one direction. It was concluded, however, that at this time a maximum dBA standard would not be imposed. The reasons leading to this conclusion were, (1) available data indicate that portable air compressors exhibited little noise directivity, and (2) averaging sound level data on an energy basis, in part, controls noise directivity as the highest sound level considered for averaging is more highly weighted in the averaging process.

As the Agency recognizes that portable air compressor directivity patterns may alter as units are quieted, it will, on a continuing basis assess the need for a maximum dBA standard. Accordingly, public comment and supportive data is invited as to whether the standard should include a maximum dBA level.

At this time, the proposed regulation, by adoption of the A-weighted sound level descriptor dBA, concentrates on frequencies of noise most acute to hearing and annoyance; as such, low frequency components of the portable air compressor noise spectrum are discriminated against. The significance of this and of concern to EPA, is that one method to reduce the A-weighted sound level is to shift the major spectral contribution to the frequency range discriminated against by the A-weighting network. This could result in an escalation of low frequency noise levels. This practice while achieving desired A-weighted sound level reduction could cause vibration problems, as structures are often readily excited by low frequency noise. In particular, the windows of structures adjacent to the construction site may rattle as a result of such low frequency noise.

One method to control low frequency noise is to impose C-weighted sound pressure level limits on portable air compressors since C-weighting discriminates little against low frequencies. The agency has limited data at this time on which to support a C-weighting. However, it will continue to address the potential low frequency noise problem and in the future propose control measures as may be necessary to cope with the problem.

Accordingly, public comment and supporting data is invited, in particular, as to whether a standard should be imposed on portable air compressors measured in the C-weighted sound pressure level. The Background Document to this proposed regulation indicates the adjustment of levels the Agency believes reasonable, should the data indicate the need for such a standard.

The proposed standard does not at this time address pure tones. The Agency, however, has given thought to potential pure tone noise problems. Currently, major pure tone spectral components generated by today's portable air compressors occur at low frequencies, less than 500 Hertz and are not particularly annoying as the frequencies are below the range of acute ear sensitivity. However, the Agency recognizes that as portable air compressor designs change so many the spectral character of the pure tone generating equipment. As such, the Agency will continue to address the potential of pure tone noise control and in the future propose control measures as may be necessary. Accordingly, comment and supportive data in regards to portable air compressor pure tones are invited.

The method for noise standard compliance testing, which provides for rapid acquisition of A-weighted sound pressure levels with minimum instrumentation requirements, is a modification of a method currently used by many portable air compressor manufacturers, in particular, the 12 members of the Compressed Air and Gas Institute (CAGI). The major modification of the CAGI test method is the elimination of the search for and reporting of the maximum dBA level around the portable air compressor. The major reason for its elimination was discussed above.

EPA recognizes that the proposed measurement methodology differs somewhat from the industry standard CAGI–PNEUROP methodology and from the sound power standard that is expected to be discussed at the upcoming ISO meeting on noise standards. For reasons described in this proposal, EPA believes that the proposed methodology will provide data to accurately characterize portable air compressor noise with the simplicity that is requisite to facilitate product certification at the manufacturers' plant and enforcement in the field. EPA, however, intends to closely study the recommendations of the ISO during the

public comment period. Comment is specifically solicited on the provisions of the CAGI-PNEUROP methodology deleted from the proposed methodology and on the advisability of couching on air compressor noise standard in terms of sound power rather than average sound energy.

V. Summary of Proposed Regulations

The proposed regulations will establish standards for noise emissions resulting from the operation of newly manufactured portable air compressors. The proposed standard specifies sound levels measured at a distance of 7 meters (23 feet) from surfaces of the portable air compressor enclosure in decibels on the A-weighted scale using slow meter response. The measurement procedure used to obtain the data upon which the standards are based is presented in more detail in the "Background Document for Proposed Portable Air Compressor Noise Emission Regulations" available from the Office of Public Affairs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

The proposed regulation is to take effect one year from the date of promulgation of the final notice of rulemaking. EPA is unaware of any manufacturer that would be significantly burdened by the one-year compliance date but there will be further study of this matter during the public comment period and specific comments are solicited.

The following proposed standard applies to noise produced during portable air compressor operation at maximum rated capacity:

Effective one year from the date of promulgation of this regulation, portable air compressors shall not produce an average sound level in excess of 76 dBA when measured and evaluated according to the methodology provided in this regulation.

The regulation also incorporates a detailed enforcement program which includes production verification testing, labeling requirements, selective enforcement auditing procedures and requirements applicable throughout the useful life of the vehicle.

VI. Rationale for Standard Selection

In arriving at the proposed standard, the Agency first examined the various types of construction sites in which the portable air compressor is one of approximately 20 major pieces of construction equipment that contributes to construction site noise. Studies were conducted to determine the contribution by the portable air compressor to total construction site noise associated with various construction phases in four major categories of construction (1) residential buildings, (2) non-residential buildings, (3) municipal roads, and (4) public works. These studies indicate that the portable air compressor ranks second after trucks[1] in the non-residential construction situation.

The Agency then examined the technology and costs to achieve various reduced levels of portable air compressor noise. The noise levels studied ranged in value from the present average level of 88 dBA to 65 dBA measured at 7 meters. Estimates of the cost to quiet portable air compressors were developed from data of engineering costs to quiet three representative models, industry accounting data based on 19 individual compressors, and industry-provided list price data of 194 compressor models.

The Agency then examined the health and welfare relief that various levels of reduced noise from portable air compressors would provide to the noise-impacted population. People residing around construction sites are subjected to noise levels that diminish as a function of distance from the site. The public health and welfare impact associated with these proposed regulations has been assessed in terms of the number of people 100 percent impacted by construction site noise and the impact relief that would be achieved by quieting the portable air compressor. Since truck noise contributes significantly to overall construction site noise, construction site relief provided by the proposed portable air compressor regulation in conjunction with potential proposed regulations for new medium and heavy trucks has also been assessed. In order to quantify the public health and welfare impact, the number of people impacted at noise levels above 55 L_{dn} were translated to the equivalent number of people impacted at 75 L_{dn}, which is a level corresponding to the evocation of extreme annoyance, speech interference and the potential for hearing loss.

Additionally, the Agency examined the economic impact of cost of compliance with the various portable air compressor noise levels selected for study.

Based on the results of the various examinations performed, the Agency concluded that at this time the only feasible standard for portable air compressors is 76 dBA because technology to achieve this level has been demonstrated as some "quieted" machines of this level are already on the market; the cost of compliance is not unrealistic as compressor list prices are estimated to increase by no more than an average of 16 percent; and little (about one percent as opposed to the initial 11%) extra relief for the population exposed to construction site noise is obtained through quieting air compressors below 76 dBA. At this level, and at this time until other pieces of construction equipment are quieted, the portable air compressor is not a major source of noise on a construction site.

VII. Impact of Proposed Regulation

A. *Noise Reduction.* It is estimated that compliance with the proposed portable air compressor regulation will reduce the contribution of the portable air compressor to construction site noise from 17.8 percent in the worst present case to approximately one percent. It will also decrease the portable air compressor as a source of acoustic energy at a construction site, from the second noisiest source, after medium and heavy trucks, to the 16th noisiest piece of equipment comprising the hardware mix at a typical construction site.

B. *Health and Welfare.* It is estimated that the equivalent of approximately one million people in the United States are presently impacted by construction site noise levels. Compliance with the standard established in the proposed portable air compressor regulation is estimated to reduce the impact by approximately 11%, which would provide relief to approximately 115 thousand people. Compliance with the proposed portable air compressor regulation together with compliance with proposed noise standards for new medium and heavy trucks is estimated to reduce construction site noise impact by approximately 45%, which would provide relief to approximately 470,000 people.

C. *Cost and Economic Impact.* Using a worst case estimate of the cost to quiet portable air compressors to 76 dBA measured at 7 meters, is estimated to increase present list prices of compressor units by about 16 percent. There is reason to believe that this increase in portable air compressor price may result in a reduction of approximately 4.5 percent in total unit sales due to lower demand for the more expensive units.

The increase in first year capital costs to achieve the proposed standard is estimated to range from $19.8 to 21.0 million; this represents 17.5 to 18.6 percent of estimated portable air compressor 1976 sales of $113.2 million.

Various aspects of potential economic impact were assessed to evaluate changes which may occur due to promulgation of these proposed regulations. Upper bound cost values were used to provide a worst case estimate of economic impact. The results of the analysis are:

1. There should be little effect on upstream component suppliers. Distributors and end users may be affected in that alternative sources of compressor air, e.g., electric and hydraulic systems, will become competitive for many present uses of portable compressors.

2. Studies indicate that portable air compressor manufacturing employment could decline slightly due to the regulation. However, this is expected to be off-

[1] A report entitled "Speciality Construction Trucks: Noise and Cost of Abatement" indicates that contribution to the construction site noise by the dump trucks is largely engine related and will be controlled when these trucks meet standards to be proposed for medium and heavy duty trucks.

set by the requirement to increase personnel in the air compressor manufacturing industry to incorporate the modifications necessary to meet the proposed regulation.

3. Exports are approximately 10 percent of total sales, and no changes in export patterns are expected because of these noise regulations. Imports make up approximately 7 percent of the market and no change is expected due to a 76 dBA standard.

4. There will be no impact on the balance of trade.

5. There will be no increase in transportation costs from the manufacturers' plants to distributors or end user locations due to these regulations.

VIII. Enforcement

A. *General.* The EPA enforcement strategy under the Noise Control Act of 1972 will place a major share of the responsibility on the manufacturer for pre-sale testing to determine the compliance of new portable air compressors with these regulations and emission standards. This approach, besides relieving EPA of an administrative burden, benefits the manufacturer by leaving his personnel in control of many aspects of the compliance program and imposing only a minimum burden on his business. At the same time, the inevitable conflict of interest imposed on the applicant makes monitoring by EPA personnel of these tests and manufacturers' actions taken in compliance with these regulation advisable to ensure that the Administrator is provided with the accurate test data he must have to determine whether the compressors distributed in commerce by a manufacturer are in compliance with these regulations. Accordingly, the regulations provide that EPA enforcement officers may be present and observe any testing required by these regulation. In addition, enforcement officers will be empowered to inspect records and facilities in order to assure that manufacturers are carrying out their responsibilities properly.

The enforcement strategy proposed in these regulations consists of three parts: (1) Production Verification, (2) Selective Enforcement Auditing, and (3) In-use Compliance Provisions.

B. *Production Verification.* Production verification is the testing by a manufacturer or EPA of selected first production models intended for sale to verify whether a manufacturer has the requisite noise control technology in hand and is capable of applying the technology in a manufacturing process. The tested first production models must conform with the standard prior to any distribution in commerce of that model. Any testing shall be done in accordance with the proposed test procedure.

Production verification does not involve any formal EPA approval or issuance of certificates subsequent to manufacturer testing, nor is any extensive testing required of EPA. The proposed regulations would require that prior to distribution into commerce of any manufactured configuration, as defined within the regulations, the configuration must undergo production verification. All testing is performed by the manufacturer at his test site, using his equipment and personnel, although the Administrator reserves the right to be present to monitor or perform any tests or to require that a manufacturer supply him with compressors for testing.

The production unit selected for testing is a compressor configuration, which is more definitive than compressor category. A compressor configuration is a subclassification of a category on the basis of delivery rate, cooling system, air intake system, engine system, exhaust system, and any other parameters which may be designated by the Administrator.

A manufacturer shall verify production compressors, prior to sale, by one of two methods: The first method will involve testing the first production compressor (intended for sale) of each configuration.

A compressor configuration would be considered to have been production verified after the manufacturer has shown, based on the application of the noise measurement tests, that a configuration conforms to the standard.

Alternatively, production verification testing of all configurations produced by a manufacturer may not be required where a manufacturer can establish that the noise levels of some configurations are consistently higher than others or are always representative of other configurations. In such a case the higher emitter would be the only configuration requiring verification testing.

This second method allows a manufacturer in lieu of testing compressors of every configuration, to group configurations into categories. A category will be defined by basic parameters such as engine type, and delivery rate. The manufacturer has the option of designating additional categories based on other parameters of his own choice. Within a category, the A-weighted sound pressure level for each configuration shall be estimated. By categorizing his configurations and successfully verifying the configuration with the highest sound pressure level, all configurations within the category will be considered verified. If the noisiest configuration cannot be clearly distinguished, this method may not be used.

These proposed regulations also provide that the Administrator may test or require testing (as the case may be) of additional compressors as a condition of production verification.

A production verification report must be filed by the manufacturer before any compressors of the configuration represented are distributed into commerce.

A configuration is considered production verified when testing on the first production compressor of that configuration or a compressor representing it is completed and a timely report has been mailed to EPA indicating the compressor conforms to the standards.

If a manufacturer proposes to add a new configuration to his product line or change or deviate from an existing configuration with respect to any of the parameters which define a configuration, the manufacturer must verify the new configuration either by testing a compressor and submitting data or by filing a report which demonstrates verification on the basis of previously submitted data.

The manufacturer must production verify from one model year to the next. In some instances, a manufacturer may verify new models based on data submitted during previous model years. The manufacturer need not verify configurations at any particular point in a model year. The requirement is only that he verify a configuration prior to distribution in commerce. The inherent flexibility in the scheme of categorization in many instances will allow a manufacturer to either verify a configuration that he may not produce until late in a model year based on representation or else wait until actual production of that configuration to verify it.

If a manufacturer fails to properly verify and a configuration is found to be in non-conformity with the regulations, the Administrator may issue an order requiring the manufacturer to cease the distribution in commerce of compressors of that configuration. The Administrator may provide the manufacturer the opportunity for a hearing prior to the issuance of such an order if the decision to issue was based on information which invokes no substantial question of fact.

Production verification performed on the first production models provides EPA with confidence that production models will conform to the standards and limits the possibility that non-conforming compressors will be distributed in commerce. Because the possibility still exists that subsequent models may not conform, assembly line vehicle testing is made a part of this enforcement strategy in order to determine whether production compressors continue to conform to the standard.

C. *Assembly Line Testing.* Assembly line testing of production vehicles is a process by which compressors as they are completed on the assembly line are tested to determine whether they conform to applicable standards.

These regulations provide for sample testing based on an audit of production line compressors for cause (Selective Enforcement Auditing). An auditing strategy enables EPA to determine if production compressors meet the applicable noise emission standards and provides a deterrent to the distribution in commerce of nonconforming products. An auditing strategy involves the testing of a representative number of production compressors chosen in a random fashion. Because the number of compressors tested under an auditing strategy is nominal, the cost and effort associated with implementation of such strategy for a conforming manufacturer are only a fraction of the cost of a program involving continuous testing.

The sampling strategy adopted by EPA does not attempt to impose a quality control or quality assurance scheme upon a manufacturer but merely audits the conformity of his products and thus

provides a deterrent to the distribution in commerce of nonconforming products.

D. *Selective Enforcement Auditing.* Selective enforcement auditing (SEA) is the term used in this regulation to describe the testing pursuant to an Administrative request, in accordance with the proposed test procedure, of a statistical sample of production compressors from a particular specified compressors configuration selected from a particular assembly plant in order to determine whether production compressors conform to the regulations and to provide the basis for further action in the case of non-conformity. Compressors will be selected on the basis of specific information, such as, but not limited to, marginal noise emission performance exhibited during production verification testing or a high failure rate of compressors in use.

Testing is initiated by a test request which will be issued to the manufacturer by the Assistant Administrator for Enforcement and General Counsel or his authorized representative to the manufacturer. A test request is confined to a single compressor configuration so that noncompliance can be associated with a particular compressor type, and initial testing may be kept to a minimum. This test request will require the manufacturer to test a sample of compressors of the specified configuration produced at a specified plant. An alternative configuration may be designated in the test request in the event compressors of the first configuration are not available.

Upon receipt of the test request the manufacturer will randomly select the sample from the first batch of compressors of the specified configuration that is scheduled for production; however, the Administrator may designate specific compressors for testing. (The purpose of the random selection is to ensure that a representative sample is drawn.) A batch is the collection of compressors as designated in the test request. As a guideline, the Administrator will normally select the number of compressors produced during a shift (or equivalent production run as determined by the Administrator) as a batch. A batch defined in this manner will allow the Administrator to select batch sizes small enough to keep the number of compressors to be tested at a reasonable number and yet be large enough to enable EPA eventually to draw statistically valid conclusions about the noise emission performance of all compressors of that configuration manufactured by the manufacturer at that plant.

One important factor which will influence the decision of the Administrator to issue a test request to a manufacturer is whether the manufacturer is conducting noise emission testing of production compressors on his own cognizance using a sampling scheme better than, similar to, or identical with the one proposed in these regulations. If a manufacturer can provide evidence that his compressors are meeting standards based on tests and sampling methods acceptable to EPA, issuance of a test request may not be necessary.

The basis for determining the proper sample size will be an adaptation of Military Standard 105D, Sampling Procedures and Tables for Inspection by Attributes. Military Standard 105D is a collection of sampling plans designed to be used in determining the acceptability of a batch of items for which one or more inspection criteria have been established. As applied to compressor noise emissions, the items being inspected are compressors and the inspection criterion is the noise emission standard.

Under inspection by attributes, items are inspected or tested to determine whether they meet the prescribed specification. The basic decision criterion is the number of products whose parameters meet specification rather than the average value of some parameter.

The particular type of inspection plan which has been adopted for selective noise emission testing of compressors is known as multiple sampling. Multiple sampling differs from single sampling in that small consecutive test samples are drawn from a batch rather than one large sample being drawn from a batch.

Multiple sampling offers the advantage of keeping the number of compressors testing to a minimum when the majority of compressors are meeting the standards.

The sampling plans in Military Standard 105D are arranged according to the size of the batch from which a sample is to be drawn. Each plan specifies the sample size and acceptance and rejection number for various acceptance quality levels (AQL). As applied to compressor noise emissions, the AQL is the maximum percentage of failing compressors that for purposes of sampling inspection can be considered satisfactory, where a compressor is considered a failure if it exceeds the noise emission standard. An acceptable quality level (AQL) of 6.5 percent will be established. This value was chosen to take into account some test variability. The number of failing compressors in a sample is compared to the acceptance and rejection numbers for the appropriate sampling plan. If the number of failures is less than or equal to the acceptance number, then there is a high probability that the percentage of non-complying compressors in the batch is less than the AQL. On the other hand, if the number of failing compressors in the sample is greater than or equal to the rejection number, then there is a high probability that the percentage of non-complying compressors in the batch is greater than the AQL.

In the first case, the batch is said to be accepted while in the second case it is said to be rejected. Because the sampling strategy involves a multiple sampling plan, in some instances the number of failures in a test sample may not allow acceptance or rejection of a batch so that continued testing may be required until a decision can be made to either accept or reject a batch.

Regardless of whether a batch is accepted or rejected, failed compressors would have to be repaired and/or adjusted and pass a retest before they can be distributed in commerce.

The proposed regulations establish two types of inspection criteria in accordance with Military Standard 105D. They are known as normal and tightened inspection. Normal inspection is used for determining the acceptability of the first batch or the first two batches where the first batch was accepted and assumes that the quality of a batch, that is the percentage of non-complying compressors, is less than or equal to the AQL. If the first batch is rejected, or the second batch is rejected where the first batch was accepted, then this assumption was incorrect and tightened inspection is instituted, which assumes that the submitted quality exceeds the AQL. Under tightened inspection, the producer's risk, that is the statistical probability of a good batch being rejected, is slightly increased, whereas the consumer's risk, the statistical probability of a bad batch being accepted, is slightly decreased. This is accomplished by keeping the sample size fixed while reducing the acceptance number (i.e., number of passing compressors).

After the first batch tested is accepted, the manufacturer must test a second batch using normal inspection in order to reduce the risk (that is associated with simply testing one batch of compressors pursuant to a test request) of accepting a bad batch and ending tests. However, where a first batch is rejected, tightened inspection is instituted immediately. Similarly tightened inspection is instituted when the second batch is rejected after acceptance of the first batch.

If the first two batches inspected in response to a test request are accepted, then the manufacturer will not be required, at that time to do any further sampling and testing of that configuration pursuant to the initial test request. Rejection of the first or the second batch however, would result in a number of subsequent actions. First, the manufacturer must begin to inspect consecutive batches of the affected configuration using tightened inspection, to determine whether each batch can be accepted. If a sufficient number of consecutive batches are rejected, then the manufacturer may be required to institute 100% testing for all compressors of that configuration produced at that plant. In this alternative the Administrator may, based on criteria stated in the regulations, issue an order requiring the manufacturer to cease distribution of the affected configuration into commerce. The Administrator may not provide a manufacturer the opportunity for a hearing prior to issuance of such an order if the decision to issue it was based on information which invokes no substantial question of fact.

E. *Time limitations.* Since the number of compressors tested in response to a test order may vary considerably, a fixed time limit cannot be placed on completing all testing. The proposed approach is to establish the time limit on a test time per compressor basis, taking

transportation requirements, if any, into consideration. The manufacturer would be allowed a reasonable amount of time for transport of compressors to a test facility if one were not available at the assembly plant.

F. *Recall.* Section 11(d)(1) of the Act provides that:

> Whenever any person is in violation of section 10(a) of this Act, the Administrator may issue an order specifying such relief as he determines is necessary to protect the public health and welfare.

Clearly, this provision of the Act is intended to grant to the Administrator discretionary authority to fashion civil sanctions to supplement the criminal penalties of section 11(a). If compressors which were not designed, built, and equipped so as to conform with these regulations during their useful life, were distributed in commerce, such act would be a violation of section 10(a) and remedy of such nonconformity would be appropriate. Remedy of the affected compressors shall be carried out pursuant to a recall order.

A recall order could be triggered by one of three events. The first act which could cause a recall order to be issued would be the failure of a manufacturer to properly production verify a configuration as required by the regulations. Such an order would not be issued unless compressors of the unverified configuration actually exceeds the applicable noise emission standard. This decision to recall may be based upon a technical analysis of the configuration and other appropriate information including test data. The manufacturer would be provided with the opportunity for a hearing to challenge the Administrator's decision prior to the issuance of the order except that in cases where the decision was based upon data and information which contain no disputable issues of fact no hearing would be afforded.

The second possibility under which a recall order may be issued would occur when a configuration fails an audit test conducted under these regulations. The results of the testing would serve as the basis for the decision to issue the order. Again, the opportunity for a hearing would be discretionary with the Administrator, and would depend upon whether any issues are raised which include a substantial question of fact. A third possibility under which a recall order may be issued is when properly maintained and operated compressors fail to conform to Federal standards when in use. This possibility is discussed below under the section dealing with in-use compliance.

The third possibility under which a recall order may be issued would occur when any configuration of portable air compressors, although properly maintained, used and repaired, fails to conform to applicable noise emission standards during the actual life of the compressors.

G. *Labeling.* These regulations require that compressors subject to them shall be labeled to provide notice that the compressor conforms to these regulations. The label shall contain a notice of tampering prohibitions.

H. *Right of entry and record keeping.* Because of the inevitable conflict of interest which results from any system where a significant part of the regulatory activity is controlled by those being regulated, it is essential that EPA personnel have free access to all aspects of the system in order to determine whether the requirements of the regulations are being followed and if conforming compressors are being introduced into commerce. Such access includes all facets of the testing program required by the regulations, all records, reports, and test results which must be maintained, and all facilities (production, test, and storage), which are connected with the manufacture of the compressors used for testing. These regulations spell out exactly what records and other documents, concerning testing of production vehicles, must be retained, and for how long. The procedures by which EPA testing and inspection authorized in sections 6 and 13 of the Noise Control Act of 1972 will be exercised are also specified.

These regulations also provide for a sanction against any manufacturer who refuses to allow EPA personnel entry to his facility to conduct activities authorized by the regulations. This sanction is in the form of an order issued by the Administrator to cease distribution into commerce of compressors of the specified configuration that are being manufactured at that facility. The Administrator may not provide a manufacturer the opportunity for a hearing prior to the issuance of such an order if the decision to issue it was based on information which invokes no substantial question of fact.

Many of the compressors to which these regulations apply will be manufactured and tested in facilities located outside the United States. These regulations make clear that all testing and production facilities, wherever located, are subject to the same recordkeeping and inspection requirements. Since these requirements are necessary to ensure the integrity of the testing process, and the conformity of production compressors to the regulations, tests which are not subject to them cannot be considered reliable, nor can there be assurance that production facilities not subject to them are producing compressors that conform to the regulations. In addition, to fail to apply these requirements to facilities located overseas would discriminate unjustly against domestic manufacturers in favor of their foreign competition.

These regulations will apply even to facilities located in jurisdictions where foreign law forbids the kind of summary inspections they allow. Though it is well established that American courts will not order a person to disclose documents or other information located in a foreign jurisdiction that forbids such disclosure, the reason behind that rule is to avoid a conflict of laws, and is not applicable here. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if foreign law makes it impossible to do what is necessary to ensure the accuracy of data generated at a facility as to the conformity to design requirements of compressors produced at it, no informed judgment that a compressor complies with the regulations can properly be made. It is the responsibility of the manufacturer to locate his testing and production facilities in jurisdiction where this situation will not arise.

I. *Exemptions.* The proposed regulations also outline the procedures by which EPA will administer the granting of exemptions from the prohibitions of the Act to various product manufacturers, pursuant to section 10(b). The substantive scope of the exemption provisions of sections 10(b)(1) and (2) are defined and procedures whereby exemptions may be requested are set forth. Exemptions will be granted for testing and national security reasons only. Export exemptions will be automatically effective, without request, upon the proper labeling of the products involved. Testing exemptions must be justified in writing by a sufficient demonstration of appropriateness, necessity, reasonableness, and control. Requests for national security exemptions must be endorsed by an agency of the Federal Government charged with the responsibility of national defense. This would preclude the granting of exemptions for products used for public welfare, such as municipal fire trucks.

J. *In-use compliance.* The manufacturer is required to design, build and equip compressors subject to these regulations so that they do not exceed the prescribed noise emisison standards during their useful life, provided they are properly maintained, used and repaired. In use compliance provisions are included in these regulations to insure that this obligation is satisfied. These provisions include a requirement that the manufacturer provide a warranty to purchasers [required by section 6(d)], recall nonconforming compressors if the Administrator so orders [under section 11(d)], assist the Administrator in fully defining those acts which constitute tampering [under section 10(a)(2)(A)], and provide retail purchasers with instructions specifying the maintenance, use and repair required to assure conformity with noise emission regulations during the life of the product [authorized by section 6(c)(1)], and with a log book to record maintenance and repairs performed.

Section 6(d)(1) of the Act requires the manufacturer to warrant to the ultimate and subsequent purchasers that new portable air compressors subject to these regulations are designed, built, and equipped so as to conform at the time of sale with Federal regulations. The regulations require that the manufacturer furnish this time-of-sale warranty to the ultimate purchaser in a prescribed writ-

ten form. The regulations also provide for EPA review of the written warranty and related information furnished to purchasers, dealers, zone representatives, etc., in order that the Agency can determine whether the manufacturer's warranty policy is consistent with the intent of the Act.

The recall regulations make it clear that the manufacturer may be required by EPA to remedy compressors of a particular configuration if it is determined that properly maintained and operated compressors of this configuration do not conform to Federal or identical State or local noise emission standards when in actual use. State and local jurisdictions are encouraged to assist in the federal recall program, primarily by conducting surveillance in the field. Procedural regulations for dealing with contested recall orders, in accordance with section 11(d)(2) of the Act, will be promulgated in the future.

The tampering regulations require the manufacturer to furnish the Agency with a comprehensive list of all noise control devices and elements of design for each compressor configuration. The manufacturer is also required to furnish a "tampering list" derived from the comprehensive list. The tampering list will focus on those prohibited acts which would most likely be done on compressors in use and which if done, are likely to have a serious detrimental impact on noise emissions. An act of tampering with any device or element of design on the comprehensive list even though not on the tampering list is unlawful and subject to Federal penalty. The Federal law on tampering and the EPA approved tampering list must be provided in written form to the ultimate purchaser.

The regulations dealing with instructions for proper operation, use and repair are intended to assure that purchasers know exactly what is required so that the air compressor will comply with standards during the life of the compressor. These instructions must be both necessary to assure in-use compliance and reasonableness in the burden placed on purchasers. A record or log book must be provided to the ultimate purchaser to assist purchasers in demonstrating proper maintenance should a record be necessary at any time during the life of the product. The instructions may not contain language which tends to give the manufacturer or his dealers an unfair competitive advantage over the after market. Finally, the regulations provide for Agency review of the instructions, and related langauge.

K. *Cost of compliance testing.—Production verification.* It is anticipated that the manufacturer will be able to categorize his product line and therefore minimize the amount of production verification testing required. As the proposed test methodology is very similar to the methodology currently used by many manufacturers to evaluate the noise signature of their products, minimal cost increases, over currently incurred costs, are anticipated to result due to the proposed compliance testing procedure.

The cost of preparing and filing a production verification report is nominal since it involves transcribing information, including test data, which is already available to the manufacturer.

Selective enforcement auditing. The cost of SEA to the manufacturer will be the costs associated with performing the standard test and reporting the test results plus any transportation costs, which will vary from manufacturer to manufacturer depending upon where his plants and test facilities are located.

In many instances, the cost of the program to a manufacturer will be nominal if he has in-house quality control testing programs which use procedures and equipment similar to or identical to those proposed in these regulations.

The costs to a manufacturer producing conforming products will be nominal because of the minimal testing required resulting from the multiple sampling strategy. Weather conditions may adversely affect the cost of compliance testing. We solicit suggestions on how these effects can be minimized.

Though the Agency endeavored to quantify the costs associated with compliance testing, limited data was available on which to make a judgment. Accordingly, public comment and data, in particular, are solicited as to the anticipated costs of compliance testing.

IX. Preemption

Under section 6(e)(1) of the Noise Control Act, after the effective date of a regulation under section 6, of noise emissions from a new product, no State or political subdivision thereof may adopt or enforce any law or regulation which sets a limit of noise emissions from such new products, or components of such new products, which is not identical to the standard prescribed by the Federal regulation. Section 6(e)(2), however, provides that nothing in section 6 precludes or denies the right of any State or political subdivision thereof to establish and enforce controls on environmental noise (or one or more sources thereof) through the licensing, regulation or restriction of the use, operation or movement of any product or combination of products.

The noise controls which are reserved to State and local authority by section 6(e)(2) include, but are not limited to, the following:

(1) Controls on the manner of operation of products.

(2) Controls on the time of day or night in which products may be operated.

(3) Controls on the places in which products may be operated.

(4) Controls on the number of products which may be operated together.

(5) Controls on noise emissions from the property on which products are used.

(6) Controls on the licensing of products.

(7) Controls on environmental noise levels.

Federal regulations promulgated under section 6 preempt only State or local noise emission standards on products after the effective date of the regulations, and only to the extent that such standards are different from the Federal standards relating to such products.

Conversely, State and local authorities are free to enact regulations on new products offered for sale which are identical to Federal regulations. The Environmental Protection Agency encourages the adoption of such regulations so that State and local authorities may aid in the enforcement of such standards.

State and local noise regulations applicable to products which are not covered by Federal regulations are in no way preempted by these regulations.

X. Future Intent

The Agency is pursuing a strategy through which major contributors to overall construction site noise will be identified and subsequently regulated. This coordinated approach is necessary because in most sites, a number of different construction equipment products may be operating at the same time and the quieting of only one such product may not in itself be sufficient to adequately reduce the noise from the site to a level the Agency believes required to protect the public health and welfare.

As indicated in the EPA Identification of Major Sources of Noise Report (39 FR 22297–99, June 21, 1974) the principal candidates for future regulatory efforts are known. At this time the Agency is analyzing the alternative methods of regulating construction equipment to determine whether regulation of individual products or categories of products is more appropriate.

The Agency intends to commence regulatory action on other construction equipment products in the near future, and the levels chosen for the standards in this proposed rulemaking are consistent with the overall requirements to quiet all products in order to ultimately quiet all construction sites.

The Agency believes that the standard here proposed represents the level of noise emission achievable by the best currently available technology taking into account the cost of compliance. However, as technological advance occurs, new levels may be shown to be achievable at reasonable cost. The Agency will consider all new information and data which becomes available or is presented to it, and may subsequently revise the regulations proposed herein.

XI. Public Comment

Section 6 of the Act requires that, in the case of initial proposed regulations under section 6(a)(1), final regulations be promulgated not earlier than six months after publication of proposed regulations, and not later than twenty-four months after the date of enactment of the Act. As this latter date is, in the case of portable air compressors, October 27, 1974, it would not be possible to meet the requirements of both the "not later than" and "not earlier than" provisions of the Act. Accordingly, the

Agency intends to promulgate final regulations six months after proposal of the regulations in order to meet the "not earlier than" requirement of section 6(a)(3)(A) in order to provide full opportunity for public participation in the rulemaking process as further required by section 6(c)(2).

Under section 6(c)(2) of the Noise Control Act, after publication of any proposed regulations under section 6, the Administrator shall allow interested persons an opportunity to participate in rulemaking. Interested persons may submit 5 (five) written copies of data, views or arguments in regard to the regulations proposed herein to:

Director, Standards and Regulation Division
Office of Noise Abatement and Control (AW-571)
Docket No. ONAC 74-1
U.S. Environmental Protection Agency
Arlington, Virginia 20460

All relevant material received by December 2, 1974 will be considered. All comments will be available for public inspection during normal working hours (8:00 am to 4:30 pm) at the Office of Noise Abatement and Control, Room 1108, Crystal Mall Building 2, 1921 Jefferson Davis Highway, Arlington, VA 20460.

This regulation is proposed under the authority of 42 U.S.C. 4905, 86 Stat. 1237.

Dated: October 15, 1974.

RUSSELL E. TRAIN,
Administrator.

Part 204 of Title 40 is proposed to read as follows:

PART 204—CONSTRUCTION EQUIPMENT NOISE EMISSION CONTROLS

Subpart A—General Provisions

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204.57–2 Testing by the Administrator.
204.57–3 Test compressor sample selection.
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Subpart A—General Provisions

§ 204.1 General applicability.

The provisions of this subpart are applicable to all products for which regulations have been published under this part and which are manufactured after the effective date of such regulations.

§ 204.2 Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act.

(1) "Act" means the Noise Control Act of 1972 (PL 92-574, 86 Stat. 1234).

(2) "Administrator" means the Administrator of the Environmental Protection Agency or his authorized representative.

(3) The "Agency" means the United States Environmental Protection Agency.

(4) "Export exemption" means an exemption from the prohibitions of section 10(a)(1), (2), (3), and (4) of the Act, granted by statute under section 10(b)(2) of the Act for the purpose of exporting regulated products.

(5) "National security exemption" means an exemption from the prohibitions of section 10(a)(1), (2), (3), and (5) of the Act, which may be granted under section 10(b)(1) of the Act for the purpose of national security.

(6) "Pre-verification exemption" means a testing exemption which is applicable to products manufactured prior to product verification and otherwise required under any section of this part, and used by a manufacturer from year to year in the ordinary course of business, for product development, production method assessment, and market promotion purposes, but in a manner not involving lease or sale.

(7) "Testing exemption" means an exemption from the prohibitions of section 10(a)(1), (2), (3), and (5) of the Act, which may be granted under section 10(b)(1) of the Act for the purpose of research, investigations, studies, demonstrations, or training, but not including national security where lease or sale of the exempted product is involved.

(8) "Warranty" means the warranty required by § 6(c)(1) of the Act.

(9) "Tampering" means those acts prohibited by § 10(a)(2) of the Act.

(10) "Maintenance instructions" or "instructions" means those instructions for maintenance, use, and repair, which the Administrator is authorized to require pursuant to section 6(c)(1) of the Act.

(11) "Type I Sound Level Meter" means a sound level meter which meets the Type I requirements of American National Standard Specification S1.4-1971 for sound level meters. This publication is available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(12) "dBA" is a unit of sound level measured by the use of metering characteristics and the prescribed A-weighting frequency response specified in American National Standard S1.4-1971 or subsequent revisions. This publication is available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(13) "Slow meter response" means the meter ballistics of meter dynamic characteristics as specified by American National Standard S1.4-1971, or subsequent revisions. This publication is available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(14) "Sound level" means the weighted sound pressure level measured by the use of a metering characteristic and weighing A, B, and C as specified in American National Standard Specification for Sound Level Meters S1.4-1971 or subsequent approved revision. The weighting employed must be specified otherwise A-weighting is understood. Publication S1.4-1971 is available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(15) "Sound pressure level" means in decibels, 20 times the logarithm to the base ten of the ratio of a sound pressure to the reference sound pressure of 20 micropascals (20 micronewtons per square meter). In the absence of any modifier, the level is understood to be that of a root-mean-square pressure.

(16) "Product" means any construction equipment for which regulations have been promulgated under this part.

§ 204.3 Number and gender.

As used in these rules of practice, words in the singular shall be deemed to import the plural, and words in the masculine gender shall be deemed to import the feminine and vice versa, as the case may require.

§ 204.4 Right of entry.

(a) In order to allow the Administrator to determine whether a manufacturer is complying with the provisions of the Act and these regulations, any manufacturer subject to regulation under this part shall admit or cause to be admitted any EPA Enforcement Officer

during operating hours upon demand and upon presentation of credentials to any of the following:

(1) Any facility where any product to be distributed into commerce is manufactured, assembled, or stored;

(2) Any facility where any tests conducted pursuant to this part or any procedures or activities connected with such tests are or were performed;

(3) Any facility where any test product is present; and

(4) Any facility where records, reports, other documents or information required to be maintained or provided to the Administrator are located.

(b)(1) Upon admission to any facility referred to in paragraph (a) of this section, any EPA Enforcement Officer shall be allowed:

(i) To inspect and monitor test product manufacture and assembly, selection, storage, preconditioning, noise emission testing, and maintenance, and to verify correlation or calibration of test equipment;

(ii) To inspect products prior to their distribution in commerce;

(iii) To inspect and make copies of any records, reports, documents, or information required to be maintained or provided to the Administrator under the Act;

(iv) To inspect and photograph any part or aspect of any such product and any component used in the assembly thereof that are reasonably related to the purpose of his entry;

(v) Any inspecting or monitoring activities conducted under this section shall be for the purpose of determining (A) whether required records are being properly maintained, (B) whether product testing is being conducted in accordance with these regulations, (C) whether test products are being manufactured or assembled, stored, selected and prepared for testing in accordance with the provisions of these regulations, and (D) whether products being produced for distribution into commerce are as described in the production verification report.

(2) Any EPA Enforcement Officer shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he may request to help him discharge any function listed in this paragraph. A manufacturer is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not it controls the facility.

(3) The duty to admit or cause to be admitted any EPA Enforcement Officer applies whether the facility is owned or controlled by the manufacturer or by one who acts for the manufacturer and applies both to domestic and foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that foreign law forbids. However, if foreign law makes it impossible to do what is necessary to ensure the accuracy of data generated at a facility, no informed judgment that a product has been properly tested in accordance with these regulations can properly be based on that data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(c) For purposes of this section:

(1) "Presentation of credentials" shall mean display of the document designating a person as a EPA Enforcement Officer.

(2) Where product or component storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (c)(2) of this section are concerned, "operating hours" shall mean all times during which product assembly is in operation or all times during which product testing, maintenance, and/or production or compilation of records, or any other procedure or activity related to production verification testing, or to product manufacture or assembly is being carried out in a facility.

(4) "Reasonable assistance" includes, but is not limited to, clerical, copying, interpretation and translation services, the making available, on request, of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer of how the facility operates and to answer his questions, and the performance on request of noise emission tests on any product which is being, has been, or will be used for testing. Such tests shall be nondestructive.

(d) Any entry without 24 hour prior written or oral notification to the affected manufacturer shall be authorized in writing by the Assistant Administrator for Enforcement and General Counsel.

(e) Pursuant to section 11(d)(1) of the Act, the Administrator may issue an order to the manufacturer to cease the distribution in commerce of particular product configurations being manufactured at a particular facility if:

(1) Any EPA Enforcement Officer is denied access on the terms specified in this section to such facility or portion thereof which contains any of the following:

(i) Any product which has been used or designated for use in conducting tests required by this part, or

(ii) Any products which are intended for distribution in commerce, or

(iii) Any step in the construction of a product described in paragraph (e)(1)(i) and (ii) of this section, or

(iv) Any records, documents, reports or histories required to be kept by this part.

(2) Any EPA Enforcement Officer is denied access on the terms specified in this section, to any facility where any tests required by this part or any procedures or activities connected with such tests are or were performed; or

(3) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 204.4(c)(4) in examining any of the items listed in subparagraphs (1) and (2) of the paragraph).

(4) The sanction of issuing an order to cease distribution into commerce of products may be imposed for the reasons in paragraph (e)(1), (2), and (3) of this section only when the infraction is substantial.

(f) Pursuant to section 11(d)(2) of the Act, the Administrator may, as appropriate, grant to the manufacturer an opportunity for a hearing prior to the issuance of an order to cease the distribution into commerce of products of a specified configuration. The Administrator may refuse to grant a hearing based upon his determination that the decision to issue such an order is based solely on inspection, tests or other information which involves no substantial question of fact. Hearings granted under this paragraph shall be conducted under appropriate regulations.

(g) Pursuant to section 16(d) of the Act, any employee of a manufacturer may be compelled to personally appear before an EPA Enforcement Officer during the course of an entry upon a facility of that manufacturer conducted under this paragraph. A written request for such appearance, signed by the Assistant Administrator for Enforcement and General Counsel, shall be served on the employee. Any such employee will be entitled to be accompanied, represented, and advised by counsel. No counsel who accompanies, represents, or advises an employee compelled to appear may accompany, represent or advise any other person in the investigation.

§ 204.5 Exemptions.

§ 204.5–1 Who may request an exemption.

(a) Any manufacturer may request an exemption provided by this subpart or exempt products as provided by § 204.5–5.

§ 204.5–2 Testing exemption.

(a) Any manufacturer requesting a testing exemption must demonstrate that the proposed test program:

(1) Has a purpose which constitutes an appropriate basis for an exemption in accordance with section 10(b)(1) of the Act;

(2) Necessitates the granting of an exemption;

(3) Exhibits reasonableness in scope; and

(4) Exhibits a degree of control consonant with the purpose of the program and the Environmental Protection Agency's (hereafter EPA) monitoring requirements. Paragraphs (b), (c), (d), and (e) of this section describe what constitutes a sufficient demonstration for each of the four above identified elements.

(b) With respect to the purpose of the proposed test program, an appropriate purpose is one which is consistent with one or more of the bases for exemption set forth under section 10(b)(1), namely research, investigations, studies, demonstrations, or training, but not including

national security. A concise statement of purpose is a required item of information.

(c) With respect to the necessity that an exemption be granted, necessity arises from an inability to achieve the stated purpose in a practicable manner without performing a prohibited act under sections 10(a) (1), (2), (3), or (5). In appropriate circumstances time constraints may be a sufficient basis for necessity.

(d) With respect to reasonableness, a test program must exhibit a duration of reasonable length and affect a reasonable number of products. In this regard, required items of information include:

(1) An estimate of the program's duration;

(2) The absolute number of products involved;

(3) The duration of the test;

(4) The ownership arrangement with regard to the products involved in the test;

(5) The intended final disposition of the products;

(6) The means or procedure whereby test results will be recorded.

(e) Paragraph (a) of this section applies irrespective of the product's place of manufacture.

§ 204.5–3 Pre-verification exemptions.

Section 205.5–2 does not apply for pre-verification products. In such cases, a request for exemption is necessary; however, the only information required is a statement setting forth the general nature of the pre-verification products program, the number of products involved and a demonstration that adequate record keeping procedures for control purposes will be employed.

§ 204.5–4 National security exemptions.

A manufacturer requesting a national security exemption must state the purpose for which the exemption is required and the request must be endorsed by an agency of the Federal government charged with responsibility for national defense.

§ 204.5–5 Export exemptions.

(a) A new product intended solely for export, and so labeled or marked on the outside of the container and on the product itself shall be exempt from the prohibitions of section 10(a) (1), (2), (3), and (4) of the Act.

(b) No request for an export exemption is required.

(c) It is a condition of any export exemption under section 10(b)(2) that such exemption shall be void ab initio with respect to each new product intended solely for export which is distributed in commerce for use in any state.

(d) Any manufacturers or person subject to the liabilities of section 11(a) with respect to any product, originally intended for export, but distributed in commerce for use in any state, may be excluded from the application of section 11(a) with respect to such product based upon a showing that such manufacturer;

(1) Had no knowledge of such product being distributed in commerce for use in any state; and

(2) Made reasonable efforts to ensure that such product would not be distributed in commerce for use in any state. Such reasonable efforts would include investigations, prior dealings, contract provisions, etc.

§ 204.5–6 Granting of exemptions.

(a) If upon completion of the review of an exemption request, the granting of an exemption is deemed appropriate, a memorandum of exemption will be prepared and submitted to the manufacturer requesting the exemption. The memorandum will set forth the basis for the exemption, its scope, and such terms and conditions as are deemed necessary to protect the public health and welfare. Such terms and conditions will generally include, but are not limited to, agreements by the applicant to conduct the exempt activity in the manner described to EPA, create and maintain adequate records accessible to EPA at reasonable times, employ labels for the exempt products setting forth the nature of the exemption, take appropriate measures to assure that the terms of the exemption are met, and advise EPA of the termination of the activity and the ultimate disposition of the products. EPA may limit the scope of any exemption by placing restrictions on time, location and duration. EPA may also withdraw the exemption at any time based upon information that the public health and welfare is being endangered.

(b) Any exemption granted pursuant to paragraph (a) of this section shall be deemed to cover any subject product only to the extent that the specified terms and conditions are complied with. A breach of any term or condition shall cause the exemption to be void ab initio with respect to any product. Consequently, the distribution in commerce for use of any subject product other than in strict conformity with all terms and conditions of this exemption shall constitute a violation of section 10(a) (1) and (3) of the Act, and shall render the manufacturer to whom the exemption is granted, and any other person to whom the provisions of section 10 are applicable, liable to suit under sections 11 and 12 of the Act.

§ 204.5–7 Submission of exemption requests.

Requests for exemption or further information concerning exemptions and/or the exemption request review procedure should be addressed to:

Director
Mobile Source Enforcement Division (EG–340)
Environmental Protection Agency
401 M Street, S.W., Room 3220J
Washington, D.C. 20460.

Subpart B—Portable Air Compressors

§ 204.50 Applicability.

The provisions of Subpart B, § 204.52 shall apply to portable air compressors manufactured 12 months or a greater period of time after the effective date of these regulations, that meet the definition of "New Product" in the Act and are distributed in interstate commerce. These provisions apply only to portable air compressors with a rated capacity above 75 cubic feet per minute operating nominally at 100 psi or at the maximum designed operational pressure. The provisions do not apply to the pneumatic tools or equipment that the portable air compressor is designed to power.

§ 204.51 Definitions.

(1) "Portable air compressor or compressors" means any wheel, skid, truck, or railroad car mounted, but not self propelled equipment designed to activate pneumatic tools. They consist of an air compressor (air end), a reciprocating, rotary or turbine engine rigidly connected in permanent alignment and mounted on a common frame. Also included are all cooling, lubricating, regulating, starting, fuel systems, and all equipment necessary to constitute a complete, self contained unit which develops 75 and over cfm while operating nominally at 100 psi or at the maximum designed operating pressure, but does not include any pneumatic tools themselves.

(2) "Noise Control System" includes any part, component, or system of a portable air compressor which controls or causes the reduction of noise emitted from the portable air compressor.

(3) "Maximum Rated Capacity" means that the portable air compressor operating at the design full speed with the compressor on load, delivers its rated cfm output and pressure, as defined by the manufacturer.

(4) "Model year" means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year: Provided, That if the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

(5) "Configuration" means the basic classification unit of a manufacturer's product line and is comprised of all compressor designs, models or series which are identical in all material respects with respect to the parameters listed in § 204.55–3.

(6) "Category" means a group of compressor configurations which are identical in all aspects with respect to the parameters listed in paragraph (d)(2)(1) of § 204.55–2.

(7) "Defeat device" means a sensor device which may adversely affect noise emission control under conditions or during operations likely to occur in actual compressor use.

(8) "Production verification compressor" means any compressor selected for testing, tested, or verified pursuant to the requirements of this subpart.

(9) "Noise emission test" means a test conducted pursuant to the measurement methodology specified in § 204.54.

(10) "Inspection Criteria" means the rejection and acceptance numbers associated with a particular sampling plan.

(11) "Compressor Configuration" means a subclassification of a category based on § 204.55–3.

(12) "Acceptable Quality Level" (AQL) means the maximum percentage of failing compressors that, for purposes of sampling inspection, will permit acceptance of a batch.

(13) "Batch" means the collection of successively produced compressors of the same configuration, as designated by the Administrator in a test request, from which a batch sample is to be randomly drawn.

(14) "Batch Sample" means the collection of compressors of the same configuration which is randomly drawn from a batch from which test samples are randomly drawn.

(15) "Batch Sample Size" means the number of compressors of the same configuration in a batch sample.

(16) "Test Sample" means the collection of compressors from the same configuration which is randomly drawn from the batch sample and which will receive emissions tests.

(17) "Batch Size" means the number, as designated by the Administrator in the test request, of vehicles of the same configuration in a batch.

(18) "Test Sample Size" means the number of compressors of the same configuration in a test sample.

(19) "Normal Inspection" means the inspection criteria (Appendix I, Table II) that will be used during inspection of the first batch and/or the second batch as applicable.

(20) "Tightened Inspection" means the tightened inspection criteria (Appendix I, Table III) that applies during inspection of all batches subsequent to rejection of the first batch or second inspected batch.

(21) "Acceptance of a Batch" means that the number of non-complying compressors in the batch sample is less than or equal to the acceptance number as determined by the appropriate sampling plan.

(22) "Rejection of a Batch" means the number of non-complying compressors in the batch sample is greater than or equal to the acceptance number as determined by the appropriate sampling plan.

(23) "Shift" means the regular production work period for one group of workers.

(24) "Failure" of a compressor means that the measured emissions of the compressor, when measured in accordance with the applicable procedure, exceeds the applicable standard.

(25) "Acceptance of a Compressor" means that the measured emissions of the compressor, when measured in accordance with the applicable procedure, conforms to the applicable standard.

(26) "Test Compressor" means a compressor in the test sample or a production verification compressor.

(27) "Tampering" means those acts prohibited by section 10(a)(2) of the Act.

§ 204.52 Portable air compressor noise emission standard.

(a) Effective one year from the date of promulgation of these regulations, portable air compressors shall be designed, built and equipped so that, if properly maintained, operated and repaired, they will not, at any time during the life of the product, produce average sound levels in excess of 76 dBA when measured and evaluated as prescribed in this subpart.

§ 204.53 Maintenance of records: submittal of information.

(a) The manufacturer of any new compressor subject to any of the standards or procedures prescribed in this subpart shall establish, maintain and retain the following adequately organized and indexed records:

(1) *General records.* (i) Identification and description of all compressors for which testing is required under this subpart.

(ii) A comprehensive list of all noise control devices and elements of design which are installed on or incorporated in each compressor.

(iii) A description of all procedures used to test each such compressor.

(iv) A record of the calibration of the acoustical instrumentation as is required by § 204.54.

(v) A properly filed production verification report, following the format prescribed by the Agency for the appropriate model year, fulfills each of the requirements with respect to this section.

(2) *Individual records.* (i) A complete record of all noise emission tests performed pursuant to these regulations (except tests performed by EPA directly), including all individual worksheets and/or other documentation relating to each such test, or exact copies thereof.

(ii) A record and description of all maintenance and other servicing performed, giving the date and time of the maintenance or service, the reason for it, the person authorizing it, and the names of supervisory personnel responsible for the conduct of the maintenance or service.

(iii) A record and description of each test performed to diagnose engine or noise emission control system performance, giving the date and time of the test, the reason for it, the person authorizing it, and the names of supervisory personnel responsible for the conduct of the test.

(iv) The dates and times that the compressor was idle in storage, and in transit.

(v) A brief description of any significant events affecting the compressor during any time in the period covered by the history not described by an entry under one of the previous headings including such extraordinary events as compressor accidents.

(3) All records required to be maintained under this part with respect to compressor configurations shall be retained by the manufacturer for a period of three (3) years from production verification of that compressor configuration. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending on the record retention procedures of the manufacturer. However, all of the information contained in the hard copy shall be retained.

(b) The manufacturer of any new compressor subject to any of the standards prescribed in this part shall submit to the Administrator at the time of issuance by the manufacturer copies of all instructions or explanations regarding the use, repair, adjustment, maintenance, or testing of such compressor relevant to the control of noise emissions, including any lists identifying or defining any element of design or device incorporated into compressors in compliance with the Act, issued by the manufacturer for use by other manufacturers, assembly plants, distributors and dealers: *Provided*, That any material not translated into the English language need not be submitted unless specifically requested by the Administrator.

(c) The manufacturer shall, pursuant to a request made by the Administrator, submit to the Administrator the following information with regard to new compressor production:

(1) Number of compressors, by configuration, scheduled for production for the time period designated in the request.

(2) Number of compressors by configuration, produced during the time period designated in the request which are complete for distribution in commerce.

(d) Nothing in this section shall limit the Administrator's discretion to require the manufacturer to retain records or submit information not specifically required by this section.

§ 204.54 Portable air compressor noise test procedures.

(a) *General.* This section prescribes the conditions under which noise emission standard compliance testing must be conducted and the measurement procedures that must be used to measure the sound level and to calculate the average sound level of portable air compressors for which the test is conducted.

(b) *Test site description.* Locations for measuring noise employed during noise compliance testing must consist of an open site above a hard reflecting plane. The reflecting plane must consist of a surface of sealed concrete or sealed asphalt and must extend 1 meter beyond each microphone location. No reflecting surface such as a building, sign board, hillside, etc. shall be located within 10 meters of a microphone location.

(c) *Measurement equipment.* The measurement equipment must be used during noise standard compliance testing and must consist of the equivalent of the following:

(1) A sound level meter and microphone system that conform to the Type

I requirements of American National Standard (ANS) S1.4–1971, "Specification for Sound Level Meters," and to the requirements of the International Electrotechnical Commission (IEC) Publication No. 179, "Precision Sound Level Meters."

(2) A windscreen must be employed with the microphone during all measurements of portable air compressor noise when the wind speed exceeds 11 km/hr. The windscreen shall not affect sound levels from the portable air compressor in excess of ±0.5 dBA.

(3) The entire acoustical instrumentation system including the microphone and cable shall be calibrated before and after each test series. A sound level calibrator accurate within ±0.5 dB shall be used. A calibration of the instrumentation shall be performed at least annually using the methodology of sufficient presion and accuracy to determine compliance with ANS S1.4–1971 and IEC 179. This calibration shall consist, at a minimum of an overall frequency response calibration and an attenuator (gain control) calibration plus a measurement of dynamic range and instrument noise floor.

(4) An anemometer or other device accurate to within ±10% shall be used to measure wind velocity.

(5) An indicator accurate to within ±2% shall be used to measure portable air compressor engine speed.

(6) A gauge accurate to within ±5% shall be used to measure portable compressor air pressure.

(7) A metering device accurate to within ±10% shall be used to measure the portable air compressor compressed air volumetric flow rate.

(8) A barometer for measuring atmospheric pressure accurate to within ±5%.

(d) *Portable air compressor operation.* The portable air compressor must be operated at the design full speed with the compressor on load, delivering its rated flow and output pressure, during noise emission standard compliance testing. The air discharge shall be provided with a resistive loading such that no significant pressure drop or throttling occurs across the compressor discharge valve. The air discharge shall be piped clear of the test area or fed into an effective silencer. The sound pressure level, due to the air discharge shall be at least 10 dB below the sound pressure level generated by the portable air compressor.

(e) *Test conditions.* Noise standard compliance testing must be carried out under the following conditions:

(1) No rain or other precipitation.

(2) No wind above 19 km/hr.

(3) No observer located within 1 meter, in any direction of any microphone location, nor between the test unit and any microphone.

(4) Portable air compressor sound levels, at each microphone location, 10 dB or greater than the background sound level.

(5) The machine shall have been warmed up and shall be operating in a stable condition as for continuous service and at its normal rated working pressure. All cooling air vents in the engine/compressor enclosure, normally open during operation, shall be fully open during all sound level measurements. Service doors that should be closed during normal operation (at any and all ambient temperatures) shall be closed during all sound level measurements.

(f) *Microphone locations.* Five microphone locations must be employed to acquire portable air compressor sound levels to test for noise standard compliance. A microphone must be located 7±.1 meters from the right-, left-, front-, back side and top of the test unit. The microphone position to the right-, left-, front- and back side of the test unit must be located 1.5±.1 meters above the reflecting plane.

(g) *Data required.* The following data must be acquired during noise emission standard compliance testing:

(1) A-weighted and C-weighted sound levels at one mircrophone location prior to operation of the test unit and at all microphone locations during test unit operations as defined in section (d).

(2) Portable air compressor engine speed.

(3) Portable air compressor compressed gas pressure.

(4) Portable air compressor flow rate.

(h) *Calculation of average sound levels.* The average dBA and dBC sound levels from measurements at the specified microphone locations must be calculated by the following method.

$$\bar{L}=10\log_{10}\frac{1}{n}\left[\text{antilog}\ \frac{L_1}{10}+\text{antilog}\ \frac{L_2}{10}+\ \ldots\ +\text{antilog}\ \frac{L_n}{10}\right]$$

where:

$\bar{L}$=average sound level, dBA or dBC as appropriate, in decibels
L=sound level, dBA or dBC as appropriate, in decibels
L_n=sound level, dBA or dBC as appropriate, in decibels
n=number of measuring positions

(i) *Presentation of information.* All information required by the following Noise Data Sheet must be recorded for each test. The recommended data format is shown by the following Table 1.

TABLE I.—*Portable air compressor noise data sheet*

Test report No. .....
Subject:
Manufacturer: ..... Model: ..... Serial No.: ..... Rated speed: ..... rpm: ..... Rated capacity: ..... m³/min. Configuration identification: ..... Category identification: .....
Test conditions:
Manufacturers test site identification and location: .....
Reflecting plane composition: .....
Operating speed as tested:
Beginning of test ..... rpm.
End of test ..... rpm.
Air pressure supplied: ..... kg/cm². Ambient wind speed .....
Actual flow rate: ..... m³/min. Barometric pressure .....
Instrumentation:
Microphone manufacturer: ..... Model No.: ..... Serial No. .....
Sound level meter manufacturer: ..... Model No.: ..... Serial No. .....
Calibrator manufacturer: ..... Model No.: ..... Serial No. .....
Other and manufacturer: ..... Model No.: ..... Serial No. .....
Data:

dB reference 2×10^{-5} pascals	Background sound level at location	Location					Average sound level
		1	2	3	4	5	
dBC.....							
dBA.....							

Tested by: ..... Date: .....
Reported by: ..... Date: .....
Supervisory personnel:
..... Title: .....
..... Title: .....

§ 204.55 Production verification.

§ 204.55–1 General standards.

(a) Every new compressor manufactured for distribution in commerce or imported into the United States which is subject to any of the standards prescribed in this subpart:

(1) Shall be verified in accordance with the Production Verification procedures described in this subpart;

(2) Shall be represented in a Production Verification Report, as required by § 204.55–4 of this subpart;

(3) Shall be labeled in accordance with the requirements of § 204.56 of this subpart; and

(4) Shall conform to the applicable noise emission standard established in § 204.52 at the time of distribution in commerce.

§ 204.55–2 Production verification; compliance with standards.

(a) In order for a manufacturer to distribute compressors of a compressor configuration in commerce, such configuration must have undergone production verification in accordance with the requirements of this subpart and have been found to be in compliance with the applicable standards established by this subpart.

(b)(1) Production verification requirements with regard to each compressor configuration which must be fulfilled prior to distribution in commerce of compressors of a configuration consist of:

(i) Actual testing of a compressor configuration requiring production verification, conducted pursuant to § 204.55–7, and

(ii) Recording of required information pursuant to § 204.55–8;

(iii) Actual testing or retesting by the manufacturer of any additional compressors which may be required by an EPA Enforcement Officer or testing by the Administrator pursuant to § 204.55–9 (such additional testing or retesting shall be requested within 24 hours of testing required by paragraph b(1)(i) of this section); and

(iv) Compliance of the manufacturer with any requests made pursuant to § 204.4 and § 204.53 of this subpart; and

(v) Submission of a production verification report pursuant to § 205.54–4.

(2) The manufacturer shall notify the Administrator ten (10) days prior to any production verification testing pursuant to this section so that EPA Enforcement Officers may be present and observe such testing.

(3) The test compressors selected in accordance with § 204.55–6 must comply with the applicable standards when tested in accordance with § 204.55–7.

(c)(1) In lieu of testing compressors of every configuration, the manufacturer may elect to group configurations into categories and verify the configuration based on representative testing.

(2) In order for a category to be verified based on such representative compressor testing, the following production verification requirements must be fulfilled prior to distribution in commerce of compressors of a category:

(i) Actual testing pursuant to § 204.-55–7 of a compressor selected in accordance with § 204.55–5 which must be a compressor of the configuration which is identified pursuant to paragraph (d)(3) of this section as having the highest sound pressure level within the category; and

(ii) Complying with the requirements of paragraphs (b)(1)(ii), (iii), (2), (3), and (4) of this section.

(d)(1) If a manufacturer elects to production verify all or part of his product line pursuant to paragraph (c) of this section then such manufacturer shall group affected vehicle configurations into categories.

(2) Each category will be determined by a separate combination of at least the following parameters (a manufacturer may use more parameters):

(i) Engine type:
(A) Reciprocating gasoline.
(B) Diesel—two cycle.
(C) Diesel—four cycle.
(D) Rotary—(Wankel).
(E) Turbine.
(F) Reciprocating (other fuels).
(ii) Engine displacement.
(iii) Engine manufacturer.
(iv) Compressor delivery rate (cfm).

(3) The manufacturer shall identify the configuration within each category which emits the highest sound pressure level (dBA) based on the criteria in § 204.55–4(b)(3)(iii).

(e)(1) If after review of the test reports and data submitted by the manufacturer and data derived from additional testing conducted pursuant to § 204.55–7, or other data, the Administrator determines that compressor configuration has been incorrectly grouped into a category, he may notify the manufacturer of such error and request that the manufacturer submit a revised report and that he re-verify according to the corrected verification request.

(2) The manufacturer may, at his option, proceed with any of the following alternatives with respect to any compressor configuration represented by a test compressor determined not in compliance with applicable standards:

(i) Delete that configuration from the production verification report. Configurations so deleted may be included in a later report under § 204.55–4.

(ii) Modify the test compressor and demonstrate by testing that it meets applicable standards. Select another production compressor which is in all material respects the same as the first compressor, as modified, which shall then be operated and tested in accordance with applicable test procedures.

(iii) The compressor configurations represented by the failed test compressor are not production verified.

(f) Where possible, a manufacturer should include in a single production verification report all compressors for which production verification is required. A manufacturer may, however, choose to submit separate production verification reports for part of his product line.

§ 204.55–3 Configuration identification.

(a) A separate compressor configuration shall be determined by each combination of the following parameters:

(1) The delivery rate (cfm at 100 psi).

(2) The compressor type (screw, sliding vane, etc.).

(3) Number of compressor stages.

(4) Maximum pressure (psi).

(5) Air intake system of compressor:

(i) Number of filters.

(ii) Type of filters.

(iii) Air tank capacity.

(6) The engine system:

(i) Type [gasoline, diesel (2 or four cycle), turbine, Wankel, etc.].

(ii) Number of cylinders and configuration (L–6, V–8, V–12).

(iii) Displacement.

(iv) Horsepower.

(v) Full load rpm.

(vi) Manufacturer.

(7) Type cooling system.

(8) Fan:

(i) Diameter.

(ii) Drive ratio

$$\frac{\text{max fan rpm}}{\text{max engine rpm}}$$

(iii) Blade.

(A) Tip clearance.

(B) Spacing (even/staggered).

(C) Number.

(9) Fan shroud.

(10) The compressor enclosure:

(i) Height, length, and width.

(ii) Thickness.

(iii) Material composition.

(11) The induction system (engine):

(i) Natural.

(ii) Turbocharged.

(12) The exhaust system:

(i) Number and diameter of exhaust pipes.

(ii) Number and volume of mufflers.

(iii) Manufacturer of mufflers.

(iv) Type or thickness of composition of mufflers of pipes.

(13) Other insulation apparatus, component or system installed primarily to attenuate noise emissions.

(b) For each configuration, describe the function, location, and/or operation of any device which is known or can reasonably be expected to affect noise emissions from the compressor and does not operate during all modes of compressor operation (i.e., "defeat device" and over temperature protection).

§ 204.55–4 Production verification report; required data.

(a) Prior to the distribution in commerce of any compressor to which these regulations apply the manufacturer shall submit a production verification report. The report shall be submitted to the Director, Mobile Source Enforcement Division, Office of Enforcement and General Counsel (EG–340), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

(b) The report shall be signed by a Vice-President of the manufacturer and shall include the following:

(1) A description of the manufacturer's emission test facilities which meet the specifications of § 204.54 and have been utilized to conduct testing pursuant to this Subpart B.

(2) A description of normal predelivery maintenance procedure. This information shall be updated in accordance with § 204.53.

(3)(i) A list and description of all compressor configurations, as determined in accordance with § 204.55–3, to be distributed in commerce by the manufacturer including a list identifying or defining any element of design or device incorporated into compressors for the purpose of noise control.

(ii) If a manufacturer elects to production verify pursuant to § 204.55–2(c) such list of configurations shall be grouped into categories and the configuration, within each category, which is estimated to have the highest sound pressure level shall be identified.

(iii) The average (estimated or actual) sound pressure level (dBA) shall be stated for each configuration in the category. The manufacturer may estimate the average sound pressure level based on his best technical judgment and/or data. The criteria used to estimate each sound pressure level shall be stated with the estimates.

(iv) The approximate dates of production of the first compressor of each configuration (except the configuration selected as representative pursuant to § 204.55–2) shall be stated.

(4) For each test conducted pursuant to § 204.55–7.

(i) Test compressor description including,

(A) Configuration identification in accordance with § 204.55–3 and category identification where applicable.

(B) Year, make, build date, and model of compressor.

(C) Compressor identification number.

(ii) Test numbers and results of all official tests conducted in accordance with § 204.55–7 including, (A) for a valid test, sound level measurements at all measurement points, the ambient background level at one point, and average sound levels calculated in accordance with § 204.54 and (B) for each invalid test, sound level measurements at all measurement points and the ambient background noise level at one point recorded in accordance with § 204.54 and the reason for invalidation.

(iii) A complete description of any preparation, maintenance or testing which was performed on the compressor and (A) has not been reported pursuant to any other paragraph of this subpart and (B) shall not be performed on all other production compressors.

(iv) Where a replacement compressor was necessary, the reason for replacement and test results, if any, for replaced compressor.

(v) Any other information the Administrator may request relevant to the determination as to whether the manufacturers' compressors have been or are being distributed in commerce in compliance with these regulations.

(vi) The following statement and endorsement:

This report is submitted pursuant to section 6 and section 13 of the Noise Control Act of 1972. All testing for which data is reported herein is conducted in strict confidence with applicable regulations under 40 CFR Part 204 et seq. All the data reported herein is a true and accurate representation of such testing. All other information reported herein is, to the best of ----------
(company name)
knowledge, true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder.

(Vice President Company)

§ 204.55–5 Test compressor sample selection.

(a) Test compressors of a configuration for which production verification testing in accordance with § 204.54 is required by § 204.55–2 shall be selected in accordance with the following criteria:

(1) The test compressor shall be the first compressor of the subject configuration which has been assembled using the manufacturer's normal mass production processes and will be sold or offered for sale in commerce.

(2) No quality control, quality assurance, testing, assembly, or selection procedures shall be used on the test compressor or any portion thereof, including parts and subassemblies that will not be used during the production and assembly of all other compressors of that configuration which will be distributed in commerce.

§ 204.55–6 Test compressor preparation.

(a) Prior to the official test, the test compressor selected in accordance with § 204.55–5 shall not be prepared, tested, modified, adjusted, or maintained in any manner (except as provided in paragraph (b) of this section) that is not part of the manufacturer's prescribed end-of-line inspection procedures which are documented in the manufacturer's compressor assembly and inspection procedures, or that is not part of the normal predelivery procedure for all similar production compressors of that configuration as are permitted under this subpart or are approved in advance by the Administrator: Except, That equipment or fixtures necessary to conduct the test may be installed on the compressor: *Provided,* That such equipment or fixtures (1) shall have no effect on the noise emissions of the compressor, and (2) shall be adequately described in the production verification report submitted pursuant to § 204.55–4.

(b) In the event of compressor malfunction (i.e., failure to start, misfiring cylinder, etc.), the manufacturer may perform the maintenance that is necessary to enable the compressor to operate in the normal manner: *Provided,* That such maintenance is documented and reported in accordance with the applicable section of this subpart.

§ 204.55–7 Test procedures.

(a) The manufacturer shall conduct one valid test in accordance with the test procedures specified in § 204.54 of this subpart for each compressor selected for verification testing pursuant to § 204.54.

(b) No maintenance will be performed on test compressors, except as provided for by § 204.55–6 nor will any compressor substitution or replacement be allowed, unless provided for by the Administrator. In the event a compressor is unable to complete the emission test, the manufacturer may request that the Administrator authorize him to repair or replace the compressor. Any replacement compressors will be production compressors of the same configuration as the replaced compressor and will be subject to all the provisions of these regulations.

(c) In the event a compressor fails to comply with the standards of this subpart when tested in accordance with the procedures specified in paragraph (a) of this section, the manufacturer may proceed in accordance with § 204.55–2(e)(2) of this subpart.

§ 204.55–8 Information to be recorded.

The following information shall be recorded with respect to each test conducted pursuant to § 204.55–7.

(a) All information to be required pursuant to § 204.54.

(b) Any other information as the Administrator may require to enable him to determine whether such manufacturer has acted or is acting in compliance with the Act.

§ 204.55–9 Testing by the Administrator.

(a)(1) The Administrator may require that the compressor tested for production verification or other compressors be submitted to him, at such place and time as he may designate for the purpose of conducting tests in accordance with § 204.55–7.

(2) The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator of the type required by these regulations shall be made available by the manufacturer for test operations.

(3) Any testing conducted pursuant to this paragraph shall be performed within fifteen (15) days of notification to the manufacturer that such testing is required except that such period may be extended by increments of 24 hours or one business day where weather conditions during the normal working hours in any 24 hour period do not permit testing: *Provided,* That weather conditions are reported.

(b)(1) If based on tests conducted by the Administrator using a manufacturer's test facilities, the Administrator determines that the test facility is inappropriate for conducting the tests required by this part he will notify the manufacturer in writing of his determination and the reasons therefor.

(2) After the notification in (b)(1) above no data derived from the subject test facility will be acceptable for the purpose of this part.

(3) The manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b)(1) of this section based on data or information which indicates that changes have been made to the test facility and such changes have resolved the reasons for disqualification.

(4) The Administrator will notify the manufacturer of his determination with regard to requalification of the test facility within 10 days of the request pursuant to paragraph (b)(3) of this section.

(5) The Administrator may, as appropriate, grant to the manufacturer an opportunity for a hearing at the time of the Administrator's notification to the manufacturer, under paragraph (b)(4) above, of his determination not to requalify the manufacturer's test facility. The Administrator may refuse to grant a hearing based upon his determination that the decision to issue such an order is based solely on inspection, tests or other information under this paragraph which involves no substantial question of fact. Hearings granted under this paragraph shall be conducted under appropriate regulations.

(c)(1) Whenever the Administrator conducts a test on a test compressor, the results of that test shall constitute the official test data for that compressor and shall be used as production verification data for that compressor configuration and other compressor configurations represented by that compressor, if any.

(2) The Administrator may accept the original production verification data upon a showing by the manufacturer that the data acquired under paragraph (a) were erroneous and that the initial data were correct.

§ 204.55–10 Addition of, changes to and deviation from a compressor configuration during the model year.

(a) Any change to a configuration with respect to any of the parameters stated in § 204.55–3 shall constitute the addition of a new and separate configuration or category to the manufacturer's product line.

(b) (1) When a manufacturer introduces a new category or configuration to his product line, he shall proceed in accordance with § 204.55–2.

(2) If the configuration to be added can be grouped within a verified category and the new configuration is estimated to have a lower sound pressure level than a previously verified configuration within the same category, the configuration shall be considered verified; *Provided,* That the manufacturer submits a report pursuant to § 204.55–2 and § 204.55–4 with respect to such configuration ten (10) days before production of the first compressor of such configuration and fulfills all other requirements of § 204.55–2.

§ 204.55–11 Recall of nonverified compressors.

(a) Pursuant to section 11(d)(1) of the Act, the Administrator may issue an order to the manufacturer to recall and remedy any compressor distributed in commerce and not in compliance with this subpart.

(b) A compressor shall be deemed to be not in compliance with this subpart if it is of a configuration not represented in a properly filed production verification report as required by § 204.55–4. Such noncompliance shall include failure to report as required by § 204.55–10.

(c) Any recall order issued pursuant to this section shall be based upon a determination by the Administrator that it is probable that a compressor configuration has been introduced into commerce, that exceeds the applicable noise emission standard, as established by this Subpart. Such determination may be based upon:

(1) A technical analysis of the noise emission characteristics of the configuration in question; or

(2) any other relevant information, including test data.

(d) Recalls conducted pursuant to this section shall be administered under appropriate regulations.

(e) Pursuant to section 11(d)(2) of the Act, the Administrator, as appropriate, may grant to the manufacturer an oportunity for a hearing prior to the issuance of a recall order. The Administrator may refuse to grant a hearing based upon his determination that the decision to issue such a recall order is based solely on inspection, tests, or other information which invokes no substantial question of fact. Hearings granted under this paragraph shall be conducted under appropriate regulations.

(f) All costs associated with the recall and remedy of noncomplying compressors under this section shall be borne by the manufacturer.

(g) This section shall not limit the discretion of the Administrator to take any other actions which are authorized by the Act.

§ 204.55–12 Production verification based on data from previous model years.

(a) Production verification of each configuration will be required at the beginning of each model year except that in certain instances, the Administrator, upon request by the manufacturer, may permit the use of production verification data for specific configurations from previous production verification reports upon the following considerations:

(1) The level of the standard(s) in effect for the model years in question.

(2) Production verification data for previous years.

(3) Data obtained from selective enforcement testing during previous model years.

(4) Engineering changes incorporated during previous model years.

§ 204.55–13 Cessation of distribution.

(a) If a configuration is found to be in nonconformity with these regulations by reason of failure to be properly production verified, as required by § 204.55–2, the Administrator may issue an order to the manufacturer to cease to distribute in commerce compressors of that configuration; *Provided, however,* That such an order shall not be issued if the manufacturer has made a good faith attempt to properly production verify the configuration. The burden of establishing such good faith shall rest with the manufacturer.

(b) The Administrator may, as appropriate, grant to the manufacturer an opportunity for a hearing prior to the issuance of an order to cease the distribution in commerce of compressors of a specified configuration. The Administrator may refuse to grant a hearing based upon his determination that the decision to issue an order is based solely on inspections, tests or other information which invokes no substantial question of fact. Hearings granted under this paragraph shall be conducted under appropriate procedures prescribed by EPA.

§ 204.56 Labeling.

(a) (1) The manufacturer of any compressor subject to the standards prescribed in § 204.52 shall, at the time of manufacture, affix a permanent, legible label, of the type and in the manner described below, containing the information hereinafter provided, to all such compressors to be distributed in commerce.

(2) A plastic or metal label shall be welded, riveted, or otherwise permanently attached, in a readily visible position, on the compressor enclosure.

(3) The label shall be affixed by the compressor manufacturer, who has verified such compressor, in such a manner that it cannot be removed without destroying or defacing the label, and shall not be affixed to any equipment which is easily detached from such compressor.

(4) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(i) The label heading: Compressor Noise Emission Control Information;

(ii) Full corporate name and trademark of manufacturer;

(iii) The sound level does not exceed 76 dBA at 7 meters (23 feet) distance, when averaged over 5 measurement positions in accordance with the U.S. E.P.A. procedures.

(iv) Federal law prohibits removal or rendering inoperative the noise control features of this compressor necessary for conformance with U.S. E.P.A. regulations.

(v) The following parts and system are maintenance items which control or reduce noise. Replacement parts must be warranted by their manufacturer to be the equivalent in performance to the original parts and systems.

(vi) Compressor configuration identification which has been reported to the Agency pursuant to § 204.55–4.

(vii) Date of manufacturer.

(viii) Compressors manufactured solely for use outside the United States shall be clearly labeled "For Export Only."

§ 204.57 Selective enforcement auditing.

§ 204.57–1 Test request.

(a) The Administrator will request all testing under this subpart by means of a test request addressed to the manufacturer.

(b) The test request will be signed by the Assistant Administrator for Enforcement and General Counsel or his designee. The test request will be delivered by an EPA Enforcement Officer or sent by registered mail, return receipt requested, to the plant manager or other responsible official at the compressor assembly plant from which a compressor will be selected and tested, and a copy of the test request may be delivered to or sent by regular mail to the authorized company representative of the manufacturer who signs the Production Verification Report submitted by the manufacturer pursuant to the requirements of the applicable sections of this subpart.

(c) The test request will specify the compressor configuration selected for testing, the batch selected for testing, the manufacturer's plant or storage facility from which the compressor must be selected, the time at which a compressor must be selected, and the batch size. The test request may include an alternative configuration selected for testing in the event that a compressor of the first specified configuration is not available for testing because the compressor is not being manufactured at the specified plant and/or not being manufactured during the specified time or not being

stored at the specified plant or storage facility.

(d) Any manufacturer shall, upon receipt of the test request, select and test a batch sample of compressors from two consecutively produced batches of compressors specified in the test request in accordance with these regulations and the conditions specified in the test request.

(e) Any testing conducted at the manufacturer's facility pursuant to a test request shall be scheduled by the manufacturer within 24 hours of the request except that such scheduling may be delayed for increments of 24 hours where weather conditions during normal working hours in any 24 hour period do not permit testing.

(f) The Administrator may issue an order to the manufacturer to cease to distribute into commerce compressors of a specified configuration being manufactured at a particular facility if:

(1) The manufacturer refuses to comply with the provisions of a test request issued by the Administrator pursuant to this section; or

(2) The manufacturer refuses to comply with any of the requirements of this section.

(g) A cease-to-distribute order shall not be issued under paragraph (f) of this section if such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with the provisions of a test request or any other requirements of this section. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

§ 204.57–2 Testing by the Administrator.

(a) (1) The Administrator may require, pursuant to a test request that one or more production compressors of a specified configuration be selected in a manner designated by him and submitted to him at such place and time as he may designate for the purposes of conducting noise emission tests in accordance with § 204.57–5 of this Subpart to determine whether such compressors conform to the applicable regulations.

(2) The Administrator may specify that he will conduct such testing at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator of the type required by these regulations shall be made available by the manufacturer for test operations.

(3) Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be performed within fifteen (15) normal working days of notification to the manufacturer that such testing is required, Except, That such period may be extended by the manufacturer by increments of 24 hours or one business day where weather conditions during the normal working hours in any 24 hour period do not permit testing; Provided, That the weather conditions are recorded.

(b) (1) If based on tests conducted by the Administrator using a manufacturer's test facility, the Administrator determines that test facility is inappropriate for conducting the tests required by this part, he will notify the manufacturer in writing of his determination and the reasons therefor.

(2) After the notification in paragraph (b) (1) of this section, no data derived from the subject test facility will be acceptable for the purpose of this part and the Administrator may issue an order with respect to the compressor configuration in question to cease to distribute in commerce compressors of such configuration.

(3) The manufacturer may request in writing that the Administrator reconsider his determination in paragraph (b) (1) of this section based on data or information which indicates that changes have been made to the test facility and such changes have resolved the reasons for disqualification.

(4) The Administrator will notify the manufacturer of his determination with regard to the requalification of the test facility within 10 days of the request pursuant to paragraph (b) (3) of this section.

(c) (1) Whenever the Administrator conducts a test on a test compressor, the results of that test shall constitute the official test data for that compressor.

(2) The Administrator may accept the original data upon a showing by the manufacturer that the data acquired under paragraph (a) of this section were erroneous and that the initial data were correct.

(d) The Administrator may, as appropriate, grant to the manufacturer an opportunity for a hearing prior to the issuance of an order to cease the distribution into commerce of compressors of a specified configuration under paragraph (b) (2) of this section. The Administrator may refuse to grant a hearing based upon his determination that the decision to issue such an order is based solely on inspection, tests or other information which invokes no substantial question of fact. Hearings granted under this paragraph shall be conducted under appropriate regulations.

§ 204.57–3 Test compressor sample selection.

(a) Compressors comprising the batch sample which are required to be tested pursuant to a test request in accordance with this subpart will be randomly selected from a batch of compressors of the configuration specified in the test request. The random sampling will be achieved by sequentially numbering all of the compressors in the batch and then using a table of random numbers to select the number of compressors as specified in paragraph (c) of this section based on the batch size designated by the Administrator in the test request. An alternative random sampling plan may be used by a manufacturer: *Provided,* That the manufacturer requests approval of such a plan in advance of receipt of a test request and if the Administrator approves such a plan. A random sampling plan will be used regardless of whether the compressors of the configuration selected for testing are scheduled for production, undergoing production or stored in the manufacturer's storage facility.

(b) After the effective date of these regulations, the designated Acceptable Quality Level is 6.5 percent. The appropriate sampling plans associated with the designated AQL are contained in Appendix I, Table II for normal inspection, and in Appendix I, Table III for tightened inspection.

(c) The appropriate batch sample size will be determined by reference to Appendix I, Table I and II or III. A code letter is obtained from Table I based on the batch size designated by the Administrator in a test request. The batch sample size will be obtained from Table II when normal inspection is in effect and from Table III when tightened inspection is in effect. Normal inspection will be used for the first batch, and for the second batch where the first batch is accepted, and tightened inspection will be used for subsequent batches after rejection of the first batch or where the first batch is accepted, after rejection of the second batch. The batch sample size will be equal to the maximum cumulative sample size for the appropriate code letter obtained from Table I plus an additional ten percent rounded off to the next highest number.

(d) Individual compressors comprising the test sample will be randomly selected from the batch sample using the same random sampling plan as in paragraph (a) of this section. Test sample size will be determined by entering Table II or III, depending on whether normal or tightened inspection is in effect, at the appropriate code letter.

(e) Unless otherwise indicated in the test order, the manufacturer will select the batch sample from the production batch, next scheduled after receipt of the test order, of the configuration specified in the test order.

(f) Unless otherwise indicated in the test request, the manufacturer shall select the compressors designated in the test request for testing.

(g) At their discretion, EPA Enforcement Officers, rather than the manufacturer, may select the compressors designated in the test request for testing according to the method described in this section.

(h) The manufacturer will keep on hand all compressors in the batch sample until such time as the batch is accepted or rejected in accordance with § 204.57–8.

§ 204.57–4 Test compressor preparation.

(a) The manufacturer shall not adjust, prepare, or modify the compressor and shall not perform any emision tests on compressors selected for testing pursuant to the test request unless such adjustments, preparation, modification and shall not perform any emission tests and/or tests are part of the manufacturer's prescribed end-of-line inspection procedures, and are documented in the manufacturer's compressor assembly and inspection procedures or unless such adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator. The manufacturer may perform adjustments, preparation, modification and/or tests normally performed by his dealer to prepare the compressor for delivery to a customer or the adjustments, preparation, modification and/or tests normally performed at the port-of-entry by the manufacturer to prepare the compressor for delivery to a dealer or customer: *Provided*, That, such adjustments, preparation, modification or tests are documented and approved by the Administrator in advance.

(b) Equipment or fixtures necessary to conduct the test may be installed on the compressor, Provided, That such equipment or fixtures (1) shall have no effect on the noise emissions of the compressor, and (2) shall be adequately described in the final report submitted pursuant to § 204.57–7.

(c) In the event of compressor malfunction (i.e., failure to start, misfiring cylinder, etc.), the manufacturer may perform the maintenance that is necessary to enable the compressor to operate in normal manner; Provided, That such maintenance is documented and reported in accordance with § 204.57–7 of this subpart.

(d) The test compressor of the configuration selected for testing shall have been assembled by the manufacturer for distribution in commerce using the manufacturers normal mass production processes.

(e) No quality control, testing, assembly or selection procedures shall be used on the completed compressor or any portion thereof, including parts and subassemblies, that will not be used during the production and assembly of all other compressors of that configuration or compressor configurations represented by that configuration which will be distributed in commerce.

§ 204.57–5 Test procedures.

(a) The manufacturer shall conduct one valid test in accordance with the test procedures specified in § 204.54 for each compressor selected for assembly line testing pursuant to this Subpart.

(b) No maintenance will be performed on test compressors, except as provided for by § 204.57–4, nor will any compressor substitution or replacement be allowed, unless otherwise provided by the Administrator. In the event a compressor is incapable of completing the noise emission tests because of a substantial compressor malfunction or problem, the manufacturer may request that the Administrator authorize him to repair the compressor or the manufacturer may request that the Administrator replace the compressor when the malfunction or problem is not readily repairable within a reasonable period of time, or the Administrator may order the manufacturer to repair or replace the compressor. Any replacement compressor will be randomly selected from the batch sample.

(c) The manufacturer shall complete emission testing on a minimum of ten compressors per day for each test site at his testing facility, unless otherwise provided by the Administrator.

(d) The manufacturer will be allowed 24 hours to ship compressors from a batch sample from the assembly plant to the testing facility if the facility is not located at the plant or in close proximity to the plant; Except, That the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

§ 204.57–6 Information to be recorded.

The following information shall be recorded with respect to each test conducted pursuant to § 204.57–5 and retained in accordance with § 204.53.

(a) All information required to be recorded pursuant to § 204.54.

(b) Any other information as the Administrator may require to enable him to determine whether such manufacturer has acted or is acting in compliance with the Act.

§ 204.57–7 Reporting of test results.

(a) (1) The manufacturer shall report by telephone the numerical results of all testing conducted pursuant to § 204.57–1, § 204.57–2, § 204.57–9, § 204.57–10 performed in any twenty-four period at the opening of the first normal working day following this test period: Except, That any manufacturer whose testing facility is not located on continental United States need only send the report required in paragraph (d) of this section.

(2) For each test conducted the manufacturer will provide the following information:

(i) Configuration and category identification where applicable.

(ii) Year, make, assembly date, and model of compressor.

(iii) Compressor serial number.

(iv) Test results by serial numbers.

(b) In addition the manufacturer shall send a copy of the test report by registered airmail for such period at the conclusion of any testing done during each twenty-four hour period. The report will contain the final test results by compressor serial number for all compressors tested in any twenty-four hour period. The first test report for each batch sample will contain a listing of all serial numbers in that batch.

(c) In the case where an EPA Enforcement Officer is present during testing required by this subpart, the written reports requested in paragraph (d) of this section may be given directly to the Enforcement Officer in lieu of an airmail and telephone report.

(d) Within five days after completion of testing of all compressors in a batch sample the manufacturer shall submit to the Administrator a final report which will include the information required by the test request in the format stipulated in the test request in addition to the following:

(1) The location and description of the manufacturer's emission test facilities which meet the specifications of Subpart A and were utilized to conduct testing reported pursuant to this section.

(2) A description of the random compressor selection method used, referencing any tables of random numbers that were used, name of the person in charge of the random number selection.

(3). For each test conducted.

(i) Test compressor description including:

(A) Configuration and category identification where applicable.

(B) Year, make, assembly date, and model of compressor.

(C) Compressor serial number.

(ii) Test numbers and results of all noise emission tests including. (A) for the valid test, sound pressure level measurements at all measurement points, the ambient background noise level at one point, and the average sound pressure level calculated in accordance with § 204.57–5 and (B) for each invalid test, sound pressure level measurements at all measurement points and the ambient background noise level at one point recorded in accordance with § 204.57–5 and the reason for invalidation.

(iii) A complete description of any modification, repair, preparation, maintenance, and/or testing which was performed on the test compressor and (A) has not been reported pursuant to any other paragraph of this subpart and (B) will not be performed on all other production compressors.

(iv) Where a replacement compressor was authorized by the Administrator, the reason for the replacement and, if any, the test results for replaced compressors.

(v) Any other information the Administrator may request relevant to the determination as to whether the manufacturer's compressors have been or are being distributed in commerce in compliance with these regulations.

(vi) The following statement and endorsement:

This report is submitted pursuant to section 6 and section 13 of the Noise Control Act of 1972. All testing for which data is reported herein was conducted in strict conformance with applicable regulations under 40 CFR Part 204, et seq. All the data reported herein is a true and accurate representation of such testing. All other information reported herein is, to the best of _____ company knowledge, true and accurate. I am aware of the penalties associated with violations of the Noise Control Act of 1972 and the regulations thereunder.

_____

(Vice President Company)

§ 204.57–8 Acceptance and rejection of batches.

(a) A failing compressor is one whose measured noise emission is higher than the applicable noise emission standard.

(b) The batch from which a batch sample is selected will be accepted or rejected based upon the number of failing compressors in the batch sample. A sufficient number of test samples will be drawn from the batch sample until the cumulative number of failing compressors is less than or equal to the acceptance number or greater than or equal to the rejection number appropriate for the cumulative number of compressors tested. Normal inspection level will be used for the first batch and the acceptance and rejection numbers at the appropriate code letter obtained according to § 204.57–3 will be used in determining whether the acceptance or rejection of a batch has occurred.

(c) Acceptance or rejection of a batch takes place when a decision under paragraph (a) of this section is made on the last compressor required to make a decision under paragraph (b) of this section.

(d) If the initial batch is accepted the manufacturer will be required to test, using normal inspection, compressors from a batch sample drawn from the next batch scheduled for production after the first batch.

(e) If the second batch is accepted the manufacturer shall not be required to perform any additional testing on compressors from subsequent batches pursuant to the initiating test request.

§ 204.57–9 Additional testing.

(a) Where the initial batch is rejected, or where the first batch was accepted and a second batch was rejected after being tested using normal inspection, the manufacturer shall continue to select and test vehicles of consecutive batches of the specified configuration on a continuous basis using tightened inspection until such time as five consecutive batches have been accepted or until the manufacturer has inspected ten successive consecutive batches and been unable to accept five consecutive batches, or until the testing of further consecutive batches could not result in the acceptance of five consecutive batches out of ten tested batches or until the testing of further batches could not result in the acceptance of five out of ten tested batches: Except, that the Administrator may allow the manufacturer to test one additional consecutive batch where the last four consecutive batches have been accepted and total of ten consecutive batches have been tested using tightened inspection.

(b) The Administrator may (1) terminate testing earlier than required in paragraph (a) of this section based on his judgment that further testing will not influence his judgment that the manufacturer's compressors are being manufactured in compliance with the regulations, (2) terminate testing earlier than required in paragraph (a) of this section based on a request by the manufacturer accompanied by voluntary cessation of distribution of compressors from the configuration in question at all plants; *Provided*, That once production is reinitiated the manufacturer must take the action described in § 204–57–12 (a)(1) and (2) prior to distribution in commerce of any compressors from any plant of the compressor configuration in question.

§ 204.57–10 Continued testing.

(a) If a manufacturer must in accordance with § 204.57–9 continue to inspect compressors of a particular configuration for ten consecutive batches, or some other number as may be designated by the Administrator, and is unable to accept five consecutive batches, the Administrator may require continued 100% testing with respect to all compressors of that configuration produced at that plant.

(b) If the results of compressor testing pursuant to these regulations indicate that compressors of a particular configuration do not conform to the regulations, the Administrator may require testing pursuant to a test request for compressors of that configuration manufactured by the manufacturer in other plants.

(c) If the Administrator determines that compressors in two or more compressor configurations belonging to the same category, based on tests performed pursuant to these regulations, do not conform to the regulations, the Administrator may require testing for compressors of that category produced at one or more plants.

(d) The Administrator will notify the manufacturer in writing of his intent to require any 100% testing of compressors in paragraph (a) of this section.

§ 204.57–11 Cessation of distribution.

(a) In lieu of requiring 100 percent continuous testing of compressors of configurations found to be in nonconformity with these regulations the Administrator may issue an order to the manufacturer to cease to distribute into commerce compressors of a specified configuration being manufactured at a particular facility.

(b) The decision to issue such an order will be made by the Administrator based on such criteria as the final test results, the degree of nonconformity, the nature of the nonconformity, the identified cause of the nonconformity, the identified remedy for the nonconformity or other relevant data. Except, that the Administrator's decision to issue such an order provided for in § 204.4, § 204.57–2 need not be based on such criteria.

(c) Pursuant to section 11(d)(2) of the Act, the Administrator may, as appropriate, grant to the manufacturer an opportunity for a hearing prior to the issuance of an order to cease the distribution into commerce of compressors of a specified configuration. The Administrator may refuse to grant a hearing based upon his determination that the decision to issue such an order is based solely on inspection, tests or other information which invokes no substantial question of fact. Hearing granted under this paragraph shall be conducted under appropriate procedures prescribed by EPA.

§ 204.57–12 Prohibition on distribution in commerce; manufacturer's remedy.

(a) Once continuous testing has been instituted on a configuration/category pursuant to § 204.57–10 or the Administrator has issued an order to the manufacturer to cease to distribute into commerce compressors of a configuration, the manufacturer must take the following actions before the Administrator will consider discontinuing such testing or rescinding such order requiring cessation of sale:

(1) Submit a written report to the Administrator which identifies the reason for the noncompliance of the compressors, describes the problem, and describes the proposed quality control and/or quality assurance remedies to be taken by the manufacturer to correct the problem or follows the requirements for an engineering change pursuant to § 204.55–10; and

(2) Demonstrates that the specified compressor configuration(s) complies with the applicable emission standards by testing compressors from two consecutively produced batches of that compressor configuration in accordance with these regulations and the conditions specified in the initial test request.

(b) Any compressor failing the prescribed noise emission tests may not be distributed in commerce until necessary adjustments or repairs have been made and the compressor passes a retest.

(c) No compressors of a rejected batch may be distributed in commerce unless the manufacturer has demonstrated to the satisfaction of the Administrator that such compressors do in fact conform to the regulations. Except, That: any compressor that has been tested and does, in fact, conform with these regulations may be distributed in commerce. Failing compressors may not be distributed in commerce except in accordance with paragraph (b) of this section.

§ 204.57–13 Recall of noncomplying compressors.

(a) The Administrator may issue an order to the manufacturer to recall and remedy any compressor distributed in commerce which is of a specified configuration or category which has been determined to be a failure when tested in accordance with § 204.57–5.

(b) Recalls conducted pursuant to this section shall be administered under appropriate regulations.

(c) The Administrator may, as appropriate, grant to the manufacturer an opportunity for a hearing prior to the issuance of a recall order. The Administrator may refuse to grant a hearing based upon his determination that the decision to issue such a recall order is based solely on inspection, tests, or other information which invokes no substantial question of fact. Hearings granted

under this paragraph shall be conducted under appropriate procedures prescribed by EPA.

(d) All costs associated with the recall and remedy of noncomplying compressors under this section shall be borne by the manufacturer.

(e) This section shall not limit the discretion of the Administrator to take any other actions which are authorized pursuant to the Act.

§ 204.58 Useful life requirements.

§ 204.58–1 Warranty.

(a) The manufacturer of a portable air compressor regulated under this part shall include, in the owner's mannual or in other information supplied to the ultimate purchaser, the following statement:

NOISE EMISSIONS WARRANTY

The manufacturer warrants to the first retail purchaser and each subsequent purchaser that this air compressor was designed, built, and equipped at the time of sale to the first retail purchaser to conform with all applicable U.S. E.P.A. noise control regulations.

This warranty is not limited to any particular part, component or system of the air compressor. Defects in the design, assembly, or in any part, component, or system of the compressor which, at the time of sale to the first retail purchaser, caused noise emissions to exceed Federal standards, are covered by this warranty for the life of the air compressor.

(b) Not later than the date of submission of the product verification report required by § 204.55–4, the manufacturer shall submit to the Administrator two (2) copies of the written noise emission warranty required by paragraph (a) of this section and two (2) copies of all other information provided to the ultimate purchaser which could reasonably be construed as impacting on the warranty.

(c) Not later than 10 days after dissemination, the manufacturer shall submit two (2) representative copies of all information of a general nature, or modifications thereto, which is provided to dealers, zone representatives, or other agents of the manufacturer regarding the administration and application of the noise emission warranty. Information regarding noise emission warranty claims which is also provided to a dealer or representative in response to a particular warranty claim or dealer inquiry is not considered to be information of a general nature, provided that such information does not receive broad dissemination to dealers.

(d) All information required to be forwarded to the Administrator pursuant to this section shall be addressed to: Director, Mobile Source Enforcement Division (EG–340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

§ 204.58–2 Recall for failure to conform in use.

(a) Pursuant to section 11(d)(1) of the Act, the Administrator may order the manufacturer to recall any configuration of portable air compressors subject to this part if properly maintained and operated compressors of the configuration do not conform in use to the standards prescribed in § 204.52.

(b) For the purposes of the section, the test used to determine in-use nonconformity, may be any test prescribed in Subpart A for testing prior to sale or any other test which reasonably correlates with a test prescribed in § 204.54.

§ 204.58–3 Tampering.

(a) For each model year and for each configuration of portable air compressors covered by this part, the manufacturer shall submit to the Administrator no later than 90 days prior to the introduction into commerce:

(1) A list of the devices and elements of design which control noise;

(2) A list of those parameters, including acceptable ranges, of the devices and elements of design listed pursuant to subparagraph (1) which are known to be related to noise control;

(3) A list of those acts, which in the manufacturer's estimation, might be done to the compressor in use, on more than an occasional basis, and result in an increase noise emissions above the standards prescribed in § 204.52.

(4) The estimated impact on noise emissions of those acts listed pursuant to paragraph (a)(3) of this section; and

(5) A proposed list for distribution to the ultimate purchaser of those acts which, in the manufacturer's estimation, constitute the removal or rendering inoperative of the noise control system of the compressor, for purposes other than maintenance or repair. This list should be in language understandable to purchasers; it should focus on those acts which are likely to be done to compressors in use, and if done, will have a serious detrimental impact on noise control.

(b) The manufacturer shall include, in the owner's manual the following information:

(1) The statement:

TAMPERING WITH NOISE CONTROL SYSTEM PROHIBITED

Federal law prohibits the following acts or the causing thereof:

(1) The removal or rendering inoperative by any person, other than for purposes of maintenance, repair, or replacement, of any device or element of design incorporated into any new portable air compressor for the purpose of noise control, prior to its sale or delivery to the ultimate purchaser or while it is in use, or (2) the use of the air compressor after such device or element of design has been removed or rendered inoperative by any person. Among those acts included in the prohibition against tampering are those acts listed below.

(2) Immediately following the statement required by paragraph (b)(1) of this section, the manufacturer shall include the list required by paragraph (a)(5) of this section, as modified by the Administrator.

(c) For the purposes of this section, if it is necessary to test to determine whether a noise control system has been rendered inoperative, noise emissions may be measured by any test prescribed in § 204.54 for testing prior to sale or any other test which demonstrates that the compressor would fail to comply with the standards prescribed in § 204.52 as measured by a test prescribed in section 54 of this part.

(d) The provisions of this section are not intended to preclude any State or local jurisdiction from adopting and enforcing their own prohibitions against the removal or rendering inoperative of noise control systems on portable air compressors subject to this part.

(e) All information required by this section to be furnished to the Administrator shall be sent to the following address: Director, Mobile Source Enforcement Division (EG–340), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

§ 204.58–4 Instructions for maintenance, use, and repair.

(a)(1) The manufacturer shall provide to the ultimate purchaser of each portable air compressor covered by this part, written instructions for the proper maintenance, use, and repair of the compressor to assure compliance with the standards contained in § 204.52 during the life of the compressor.

(2) The purpose of the instructions is to inform purchasers and mechanics of those acts necessary to assure that the air compressor will conform to Federal noise emission standards throughout its life. Manufacturers should prepare the instructions with this purpose in mind. The instructions should be in a clear, and to the extent practicable, non-technical language.

(3) The instructions must not be used to secure an unfair competitive advantage. They should not restrict replacement equipment or service to original equipment or dealer service. Manufacturers who refer to original equipment should be prepared to make performance specifications on such equipment public.

(b) The instructions required by this section shall contain a description of the documentation which the manufacturer will require from the ultimate purchaser or any subsequent purchaser as evidence of compliance with these instructions.

(1) For this purpose, the manufacturer shall provide a record or log book which will contain a schedule of performance for all required noise emission control maintenance. Space shall be provided in this record book so that the purchaser can note what was done, by whom, where, and when.

(2) The record book shall contain the following statement:

In order to maintain this compressor in compliance with applicable Federal noise control regulations for the life of the product, the owner should comply with the maintenance instruction performance schedule provided in this manual. If failure to comply with the manufacturer's instructions on the proper maintenance, use and repair of noise emission controls results in the product's nonconformity with Federal regulations, the manufacturer will be relieved of all responsibility to remedy the nonconformity. However, non-compliance with these maintenance

instructions does not in any way affect the manufacturer's warranty that this product was designed, built and equipped so as to conform at the time of sale with Federal noise standards.

(c) Not later than the date of submission of the product verification report required by § 204.55–4, the manufacturer shall submit to the Administrator two (2) copies of the maintenance instructions (including the record book) required by paragraphs (a) and (b) of this section.

(d) The Administrator will require modifications to the instructions if they are not both necessary and reasonable.

(e) Information required to be submitted to the Administrator pursuant to this section, shall be sent to the following address: Director, Mobile Source Enforcement Division (EG–340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

APPENDIX I

TABLE I.—SAMPLE SIZE CODE LETTERS

Batch size:	Code letter
2 to 8	A
9 to 15	B
16 to 25	C
26 to 50	D
51 to 90	E
91 to 150	F
151 to 280	G
281 to 500	H
501 to 1200	J

TABLE II.—*Sampling plans for normal inspection*

Sampling size code letter	Test sample	Test sample size	Cumulative test sample size	Inspection acceptance No.	Criteria rejection No.
A	1st	2	2	0	1
B	1st	2	2	0	1
C	1st	2	2	(1)	2
	2d	2	4	(1)	2
	3d	2	6	0	2
	4th	2	8	0	3
	5th	2	10	1	3
	6th	2	12	1	3
	7th	2	14	2	3
D	1st	2	2	(1)	2
	2d	2	4	(1)	2
	3d	2	6	0	2
	4th	2	8	0	3
	5th	2	10	1	3
	6th	2	12	1	3
	7th	2	14	2	3
E	1st	3	3	(1)	2
	2d	3	6	0	3
	3d	3	9	0	3
	4th	3	12	1	4
	5th	3	15	2	4
	6th	3	18	3	5
	7th	3	21	4	5
F	1st	5	5	(1)	3
	2d	5	10	0	3
	3d	5	15	1	4
	4th	5	20	2	5
	5th	5	25	3	6
	6th	5	30	4	6
	7th	5	35	6	7
G	1st	8	8	(1)	4
	2d	8	16	1	5
	3d	8	24	2	6
	4th	8	32	3	7
	5th	8	40	5	8
	6th	8	48	7	9
	7th	8	56	9	10
H	1st	13	13	0	4
	2d	13	26	1	6
	3d	13	39	3	8
	4th	13	52	5	10
	5th	13	65	7	11
	6th	13	78	10	12
	7th	13	91	13	14
J	1st	20	20	0	5
	2d	20	40	3	8
	3d	20	60	6	10
	4th	20	80	8	13
	5th	20	100	11	15
	6th	20	120	14	17
	7th	20	140	18	19

[1] Acceptance not permitted at this sample size.

TABLE III.—*Sampling plans for tightened inspection*

Sample size code letter	Test sample	Test sample size	Cumulative test sample size	Inspection acceptance No.	Criteria rejection No.
A	1st	3	3	0	1
B	1st	3	3	0	1
C [1]	1st	3	3	[2]	2
	2d	3	6	[2]	2
	3d	3	9	0	2
	4th	3	12	0	3
	5th	3	15	1	3
	6th	3	18	1	3
	7th	3	21	2	3
D	1st	3	3	[2]	2
	2d	3	6	[2]	2
	3d	3	9	0	2
	4th	3	12	0	3
	5th	3	15	1	3
	6th	3	18	1	3
	7th	3	21	2	3
E	1st	3	3	[2]	2
	2d	3	6	[2]	2
	3d	3	9	0	2
	4th	3	12	0	3
	5th	3	15	1	3
	6th	3	18	1	3
	7th	3	21	2	3
F	1st	5	5	[2]	2
	2d	5	10	0	3
	3d	5	15	0	3
	4th	5	20	1	4
	5th	5	25	2	4
	6th	5	30	3	5
	7th	5	35	4	5
G	1st	8	8	[2]	3
	2d	8	16	0	3
	3d	8	24	1	4
	4th	8	32	2	5
	5th	8	40	3	6
	6th	8	48	4	6
	7th	8	56	6	7
H	1st	13	13	[2]	4
	2d	13	26	1	5
	3d	13	39	2	6
	4th	13	52	3	7
	5th	13	65	5	8
	6th	13	78	7	9
	7th	13	91	9	10
J	1st	20	20	0	4
	2d	20	40	2	7
	3d	20	60	4	9
	4th	20	80	6	11
	5th	20	100	9	12
	6th	20	120	12	14
	7th	20	140	14	15

[1] If sample size equals or exceeds batch size, do 100 percent inspection.
[2] Acceptance not permitted at this sample size.

[FR Doc.74-24731 Filed 10-25-74;8:45 am]